

UNIVERSITY OF TORONTO

A standard linear barcode is positioned vertically on the left side of the label. It consists of vertical black bars of varying widths on a white background.

3 1761 010562627

Digitized by the Internet Archive
in 2008 with funding from
Microsoft Corporation



CAPITAL PUNISHMENT:

THE

IMPORTANCE OF ITS ABOLITION.

A Prize Essay.

BY THE

REV. JAMES PEGGS,

LATE MISSIONARY IN INDIA,

AUTHOR OF "INDIA'S CRIES TO BRITISH HUMANITY."

LONDON:

THOMAS WARD AND CO.

PATERNOSTER-ROW.

HV

2 10

4.0

144

WILLIAM TYLER,
PRINTER,
5, BOLT-COURT, LONDON

PREFACE.

THE Roman who uttered the well-known sentiment, "I am a man, and feel a concern in every thing that relates to mankind," has been commended by succeeding generations. The writer trusts that the motives which have led to the discussion of the subject of Capital Punishment are of a philanthropic character. The importance of the subject is self-evident, affecting, as it does, the social and political, the temporal and eternal interests of individuals and families, communities and empires. Yet it must be acknowledged, neither the philanthropist nor the christian, neither the legislator nor the divine, until within the last few years, has given the subject that grave and anxious consideration which it merits. The state-

ment of the great philanthropist Clarkson is worthy of the most profound and pious investigation: “It seems fast approaching to an axiom, that crimes are less frequent, in proportion as mercy takes the place of severity, or as there are judicious substitutes for the punishment of death.” The recent ameliorations of the criminal code of this country are considerable, and of the most salutary nature; but still the question returns like the echo, “Under the mild sway of Christianity should any one be put to death?” “Should any one be put to death?” Who shall be the honoured individual that shall be favoured to settle this great problem in our national jurisprudence?

The following anecdote appears interesting:— “In front of St. Peter’s Church, at Rome, stands an obelisk of red Egyptian granite, 120 feet high. It was conveyed to Rome by order of the emperor Caligula, but remained partly buried in the earth, on the spot where it had been deposited, until, about two hundred and fifty years since, Pope

Sixtus the fifth, with the assistance of elaborate pieces of machinery, the further aid of eight hundred men, and one hundred and sixty horses, succeeded in getting it out of the ground ; four months more were required to remove it to a distance of fifty or sixty rods to its present situation. The great difficulty now was to raise it. A pedestal was erected for it to stand upon, and by means of powerful machines and many strong ropes and tackles, the lower end was placed upon the pedestal. They then commenced by the machinery, to raise up the column, but when it was so far elevated, as to be almost ready to stand, it is said, the ropes had stretched so much by the enormous weight, so much more than had been expected and provided against, that the column could be moved no farther ! Fontana, the master workman, had strictly forbidden all talking ; the men stood still, holding by the tackles so silently that a whisper might have been audible. Suddenly an English sailor, who happened

to be present, cried out, ‘ Wet the ropes ! ’ This was no sooner said than done, when to the surprise and satisfaction of all, the ropes contracted sufficiently to raise the obelisk to its place, where it has remained to this day ! ”

How great the value of an important thought ! Is the monument of Britain’s civilization rising on its base ? Who can tell but the idea “ Abolish capital punishment throughout the empire ! ” may not place it firmly ; the admiration and imitation of all nations ?

The circumstances which originated this humble effort will appear in the perusal of the Essay, and particularly by the letter of Sir E. F. BROMHEAD, Bart., who offered the premium, and was the adjudicator. It is presumed that the views here advocated are far more general than is supposed. A legal friend to whom the MS. was submitted, writes :—“ I cordially join in the sentiments and opinions which you have so ably given to the world, believing most sincerely that no human law

can justify before God at the present day and under our existing revelation and dispensations, the destruction of human life in any case, or for any cause whatever: and if we are right in this opinion, how unspeakably awful must be the responsibility of those who make, administer, and execute such laws. I sincerely wish your pamphlet in the hands, and heads, and imprinted on the hearts of every legislator, minister, and judge in the empire." May the following sentiment be verified in every effort to promote the best interests of mankind! "No one knows, let his station be ever so limited, what may be the result of his persevering attempts in the cause of justice and mercy. Great events have often followed what appeared to be but small and unimportant beginnings!"

BOURN, LINCOLNSHIRE,
APRIL 20TH, 1839.



LETTER OF ADJUDICATION

TO THE AUTHOR.

Thurlby Hall, Lincoln,
Feb. 28, 1839.

REV. SIR,

I have the pleasure to inform you, that the trifling Prize proposed on the question of **CAPITAL PUNISHMENT**, has been adjudicated to your Essay, on account of the very able manner in which the subject is discussed, and this without reference to the side of the question which you have taken.

I have the honour to be, Rev. Sir,

With much respect,

Your very faithful Servant,

EDW. FRENCH BROMHEAD.

Rev. James Peggs,
Bourn, Lincolnshire.

CAPITAL PUNISHMENT.

CHAPTER I.

Occasion of the Essay—Importance of the subject—desirable to restrict Capital Punishment to actual and wilful murder—Progress of public opinion, and the humane spirit of the British Government tending to this “consummation so devoutly to be wished”—acknowledged sentiments of the Lincoln Paper—Views of His late Majesty—Eulogy on His philanthropy, and that of Her present Majesty—anticipated Era of the Abolition of Capital Punishment.

THE writer, during a residence of several years in Bengal and Orissa, was deeply affected by the sacrifice of human life in the eastern dominions of Great Britain, from the prevalence of *the Suttee, the mortality of Pilgrimages, the Exposure of the aged and sick upon the banks of the Ganges, Infanticide, &c.*; and since his return to his native land, he has laboured to enlighten and arouse the national conscience to make “inquisition for blood,” and to suppress these murderous practices. Pub-

lications by different authors have issued from the press, and the success of their philanthropic labours is generally known. The prevalence of capital punishment in this country, powerfully struck the mind of the writer, as a relic of the idolatry and barbarism which once reigned in the western, as now in the eastern nations. An occurrence which took place at Coventry, in March, 1832, during the writer's residence in that city, tended to impress the subject indelibly upon his mind. Two young men were left under sentence of death, charged with being engaged in a riot. A very deep interest was felt in the city for the fate of these unhappy young men. By deputations to the Judge, and to London, by petitions, letters, &c., their lives were preserved; and great was the satisfaction which pervaded all ranks of society at so humane and grateful an issue of their efforts. The circumstances of this event were fraught with the deepest interest to thousands and tens of thousands, in Coventry and its vicinity.

A pamphlet on this subject has long been contemplated, but numerous avocations, an enfeebled state of health, and particularly, the delicacy, difficulty and importance of the point at issue,

have prevented any thing being attempted except the publication of a circular. The following announcement in the *Lincoln Standard*, August 22, 1838, originated this humble effort to promote the general adoption of the humane principles of our common Christianity :—

“ PRIZE ESSAY ON CAPITAL PUNISHMENT.

1. “ Whether the civil magistrate is at liberty, under the law of God, to dispense with capital punishment in case of wilful murder ?

2. “ Whether it is expedient to abolish the same, if the law leave the magistrate at liberty to do so ?

“ The Essays to be forwarded to the Publisher before the assembling of Parliament. The premium of five guineas to be awarded to the successful competitor.”

The importance of the subject under consideration must be universally felt and acknowledged. The poet has well observed,

“ To none man seems ignoble, but to man !”

Every thing respecting the destiny of a being designed for immortality, is important beyond our finite conception. Judge Blackstone forcibly remarked : [“ To shed the blood of our fellow-crea-

tures, is a matter which requires the greatest deliberation, and the fullest conviction of our own authority; for life is the immediate gift of God to man, which neither he can resign, nor can it be taken from him, unless by the command of Him who gave it." Even a heathen, with great propriety of sentiment could exclaim, "Nulla unquam de morte hominis cunctatio longa est."

The restriction of capital punishment to *actual and wilful murder*, would be a very great improvement in the jurisprudence of the nineteenth century of the Christian era. The number of capital offences which a mistaken and sanguinary spirit of legislation had created, to the close of the last century, is almost incredible. Sir Samuel Romilly's remark in the House of Commons, implying that the best way to purify our criminal code from its inhuman enactments, would be to burn the numerous penal Statutes passed during the last three centuries, for that they were nearly all of modern growth, will be illustrated by the following facts stated in the House of Commons by Mr. Fowell Buxton, viz. :—

" 4 offences were made capital in the reigns of the Plantagenets;

27 . . . Tudors;

36 In the reigns of the Stewarts ;
156 . . . House of Brunswick ; or, added the Hon. Member, “more crimes have been denounced as capital in the reign of his present Majesty, (Geo. III.) than in the reigns of the Plantagenets, the Tudors, and the Stewarts combined.”

The number of capital offences has recently been greatly reduced, giving promise of greater and yet greater reduction, till one crime, and one only—*murder, actual and wilful*, shall be punished with death. Surely the humane mind of the reader will sympathise with the writer, in fervently desiring the approach of the day which shall usher in this reign of justice and mercy. The actual state of the law at the present period appears from the following extract :—

“ CRIMINAL LAW.

“The following is a list of offences still *punishable with death* by the recent Acts for the amendment of the Criminal Law :—

- “ 1. High treason.
- “ 2. Murder.
- “ 3. Attempting to murder, by administering to, or causing to be taken by, any person, poison or other destructive thing.

“ 4. Attempting to murder, by stabbing, cutting, or wounding, or by any means whatsoever causing to any person any bodily injury dangerous to life.

“ 5. Rape.

6. Unnatural offences.

“ 7. Piracy, whenever accompanied with an attempt to murder any person.

“ 8. Robbery of any person, accompanied with an attempt to murder the person robbed, by stabbing, cutting, or wounding.

“ 9. Burglary (that is, housebreaking between nine o’clock at night and six in the morning,) accompanied with any attempt to murder any person in the house ; or if any person in the house be stabbed, cut, wounded, beaten, or struck by the burglar.

“ 10. Unlawfully and maliciously setting fire to any dwelling-house, any person being therein.

“ 11. Unlawfully and maliciously setting fire to, casting away, or in any wise destroying, any ship or vessel, either with intent to murder any person, or whereby the life of any person, lawfully being therein, shall be endangered.

“ 12. Exhibiting any false light or signal, with intent to bring any ship or vessel into danger, or

unlawfully and maliciously doing any thing tending to the immediate loss or destruction of any ship in distress.

“ 13. Every accessory before the fact to any of the above capital offences is punishable with death in like manner as the principal felon.

“ The above offences are nearly all which are now punishable capitally by the laws of England. The remaining of an assembly of persons together for one hour after they have been commanded by proclamation to disperse, under the Riot Act, is still a capital felony, and there are several other instances in which capital punishment is retained, but the offences are not of frequent occurrence. In general the new Acts have for the punishment of death substituted transportation for life, or for any term not less than fifteen years; in some cases for not less than seven years, or imprisonment with or without hard labour, in the common gaol or house of correction, for any term not exceeding five years. If any part of the period of imprisonment is to be solitary confinement, not more than one month is to be given at a time, nor more than three months' solitary confinement in one year.”

The impropriety of retaining so many offences

as *capital* is deserving grave consideration ; and the authorities are numerous and highly respectable for *restricting capital punishment to a very few crimes, if not exclusively to murder.* One of the strongest reasons against punishing with death any other offence than murder, is furnished in the “Rambler.”

“To equal robbery with murder, is to reduce murder to robbery ; to confound in common minds the gradations of iniquity, and incite the commission of a greater crime to prevent the detection of a less. If only murder were punished with death, very few robbers would stain their hands in blood ; but when by the last act of cruelty, no new danger is incurred, and greater security may be obtained, upon what principle shall we bid them forbear ?”—*Dr. Johnson.*

“It is a great abuse amongst us to condemn to the same punishment a person that only robs on the highway, and another who robs and murders. Surely, for the public security, some difference should be made. In China, those who add murder to robbery, are cut in pieces ; but not so the others ; to this difference it is owing, that though they rob, they never murder. In Russia, where the punishment of robbery and murder is the

same, they always murder: the dead, say they, tell no tales.”—*Baron Montesquieu*.

“ If we really believe that the law of Moses is the law of God, and the dictates of Divine wisdom, infinitely superior to human; on what principles do we ordain death as the punishment of an offence which, according to that law, was to be punished by a restitution of four-fold? *To put a man to death for a crime which does not deserve death, is it not murder?*”—*Dr. Franklin*.

“ For no offence but *murder*, should man lose his life.”—*Dr. A. Clarke*.

“ Our Saxon ancestors, fierce as they were in war, had but few executions in times of peace; and in all commencing governments that have the print of nature still strong upon them, scarcely any crime was held capital.”—*Dr. Goldsmith*.

“ Let us act in the spirit of our religion, by which we may be reminded that a misguided fellow-creature who is unfit to live, may be more unfit to die. Let us not forget that, although Christianity may labour to mitigate severity, it can never be supposed to authorise any increase of the punishment inflicted by the Mosaic dispensation, which, saying ‘blood for blood,’ implies

that *no crime but murder deserves the punishment of death.*”—*Lord G. Grenville.*

“Nor can those laws well be justified, which, in a variety of instances, exact the extreme penalty for offences by no means extreme in their nature.”

—*Dr. Dodd.*

“If the evil of the punishment exceed the evil of the offence, the legislator will have produced more suffering than he has prevented. He will have purchased the exemption from one evil at the price of a greater.”—*Bentham.*

“It is quackery in government, to apply too frequently the same universal remedy, the *ultimum supplicium*. That magistrate must be esteemed a weak and cruel surgeon, who cuts off every limb, which through ignorance or indolence, he will not attempt to cure.”—*Blackstone.*

In Sir Robert Peel’s speech, April 1830, he acknowledged: “It is impossible to conceal from ourselves, that capital punishments are more frequent, and the criminal code more severe in this country, than in any other in the world.”

In conclusion, who but must respond to the sentiments of Lord John Russell, in his speech, in 1837? “It is a disgrace to us to have statutes by

which *five hundred persons* may be condemned in one year. We ought not to be behind other nations in mitigating the severity of our criminal code."

It may be confidently anticipated, that the progress of knowledge, the improving state of public feeling, and the enlightened character of the British Government, are hastening the restriction of the extreme sentence of the law to the crime of murder. The Editor of the provincial paper announcing the premium for the Essay relative to capital punishment, expresses his cordial approbation of this view of the subject under consideration.* Few executions occurred in the Metropolis during the reign of his late Majesty, whose repugnance to capital punishment is well known, and which must have exerted, and will still exert, a very valuable influence. The following eulogy upon his philanthropic character cannot be read but with lively interest:—

"Whoever would portray his late Majesty's character as a Sovereign must make clemency one of its most prominent features. That beautiful attribute which softens the sternness of power,

* In the Island of Jamaica, in 1838, capital offences were reduced to four.

without impairing its dignity, was not with him the offspring of state policy, but the emanation of a naturally kind and merciful disposition. More than one anecdote of his early life have been related in the journals in confirmation of this. It is gratifying to those who like to trace consistencies of character through the life of a distinguished individual, to find that he who, when on the throne, so exercised the prerogative of mercy, as *to stay executions in the metropolis of the British empire during the space of three years*, signalised himself, soon after his entrance into the naval service, by drawing up and presenting a petition on behalf of a brother midshipman, condemned to death at Jamaica, for insubordination ; and who, but for his timely and successful interference, would inevitably have been executed !

“ Ye who love mercy, teach it to your sons.”

William IV., as the ‘father of his people,’ taught it, by his kingly example, to all his children. The old Romans awarded the ‘civic crown’ to him who saved the life of a fellow-citizen. Our late beloved Sovereign, never wore upon his manly brows the crown of a free people with so much pleasure, as when he was performing acts of charity, beneficence, and mercy.

“ We know that, *the day before his death*, conscious that his end drew near, but full of fortitude and holy resignation, he spoke with confidence of being able to “get through the business of another day;” for his mind to the last, true to the character of a patriot King, was upon the service of the country. Looking calmly on death, and prepared to lay aside his earthly crown, with an humble hope of an incorruptible one, he was resolved to perform the duties of his station as long as the state of his physical powers would permit. He did, as he anticipated, get through another day’s business; and what was that business, or, at least, an important part of it? *Placing the sign manual to the pardon of three criminals, previously to its passing under the great seal!* To that document we understand his signature is *remarkably firm*. Thus were his last moments blessed in the performance of acts of mercy. How poor and perishable are the garlands of conquerors compared with those trophies of humanity which adorned his reign and shed their mild lustre on his dying bed!”

Her present Majesty inherits similar views and feelings of “the sacredness of life.” May her reign be long and glorious, and renowned to pos-

terity as the period, (so grateful to a woman's tender heart,) when capital punishment was abolished throughout the British dominions. A public journal referring to her Majesty's commencing the duties of royalty, by "acknowledging the propriety and necessity of improvements in the legislation of the country," judiciously observed :—

"This demonstration, so full of enlightened policy and true wisdom, is also destined to experience an active existence; one proof of which has already been given by our young Queen. We allude to the commutation of the sentence of death passed upon the unfortunate dragoon, who some short time since attempted to shoot the serjeant-major of the regiment to which he belonged. That sentence was transmitted to Lord Hill, the Commander of the forces, who, according to the Articles of War, could not avoid confirming that awful sentence. But it was indispensable that the sentence and confirmation should be laid before her Majesty in council for the royal consent to allow the execution to take place; but the royal mind of our youthful Sovereign showed that it was too much imbued with the sound principles of religious and humane feeling; tempering the sternness of justice, her Majesty declined to sign

the death warrant, and the unhappy convict's sentence was commuted to banishment for life to a penal colony. This first act of a young Queen, in extending the royal prerogative of mercy to a condemned criminal, will do a thousand times more service in teaching mercy and forbearance to a people, than could the public execution of the miserable culprit; who, though his life be spared by the clemency of our youthful Sovereign, will still undergo a severe punishment during his sojourn in this life, but he will have time to make his peace with his God, and fit himself for a higher and better state of existence. It would be an act of injustice to withhold our approbation, how humble soever it may be, to acts of merciful justice, coming as they do from a young Queen, the Sovereign and hope of the British nation, who is as likely to render herself beloved by her people as any of her illustrious ancestors have ever been."

CHAPTER II.

Restriction of Capital Punishment to actual and wilful murder, preparatory to the calm investigation of the propriety of its abolition—First point in the proposed investigation, “*Whether the civil magistrate is at liberty, under the law of God, to dispense with Capital Punishment in case of wilful murder?*”—Inquiry relative to the state of the law respecting the punishment of murder in the Antediluvian, the Patriarchal, and the Mosaical ages—Important Inquiry whether Christianity enjoins or permits Capital Punishment—Presumption that it does not, from its silence upon the subject; being opposed to its principles, precepts, genius, and prospects in a future state—Opinions of eminent men in favour of the decrease, and even disuse of Capital Punishment.

THE writer has long considered it highly important to the interests of justice and humanity, that the awful penalty of the law should be immediately restricted to the crime of wilful murder. When this favoured period shall arrive, which the philanthropist ardently hopes cannot be very distant, the public mind, it is presumed, will then be in a better state to investigate the momentous subject under discussion. Lord Bacon, with his usual acumen, has observed, “Truth is the daugh-

ter of time." Is not the auspicious period approaching? Do we not see the dawn of that day when the language of prophecy shall be fulfilled; "They shall not hurt nor destroy in all my holy mountain?" The investigation of the subject must meet the cordial approval of the intelligent and benevolent mind. The probability of the position, that Christianity is opposed to the sacrifice of life, and will ultimately throw its ample shield over it, may well awaken the most anxious solicitude both in the governors and the governed. Assuredly capital punishments will cease when Christianity shall universally govern the principles, and passions, and conduct of mankind. Who shall be favoured to settle a question involving the present and eternal destiny of men in Christian countries, and among the teeming millions under their influence? Were "the inviolability of life" observed in Christendom, might it not soon be so among every "nation, and people, and kindred, and tongue?" When shall the world see this giant with one idea? Has he appeared without being known? Have not many eminent men held and avowed the sentiment, that "capital punishments are prejudicial to society, from the example of barbarity they furnish; and that

they multiply crimes instead of preventing them?" Nor is it a matter of surprise that individual opinion should be in advance. Dr. Blomfield, the Bishop of London, in a sermon for "the Prison Discipline Society," in 1828, observed, "It naturally happens, that in the process of moral improvement, as connected with civil polity, individual sagacity or benevolence is almost always beforehand with the state. It is not only unshackled by the same restraints of form and custom, but it acts under the influence of higher and more sacred motives."

Animated by such a sentiment, let every friend of his country and of man, cherish every idea which has a favourable aspect upon the present and future destiny of the human family; let such ideas, and plans, and discussions, be preserved and given to the public in a spirit and style becoming a humble and sincere inquirer, after the best way of "promoting the greatest good of the greatest number," and the results may be most propitious.

" Words are things, and a small drop of ink
Falling like dew upon a thought, produces
That which makes thousands, perhaps millions think."

The first point in the discussion of the momentous

question before us, is thus judiciously expressed, “*Whether the civil magistrate is at liberty, under the law of God, to dispense with capital punishment?*” This question presupposes that the law of God has taken cognizance of the crime of murder, and directed the degree of its punishment. It is therefore a natural and important inquiry, vitally connected with the settlement of the point at issue, What information does the Bible contain concerning the punishment of murder under the respective dispensations—antediluvian and patriarchal, Mosaical and Christian?

The antediluvian age, from the creation to the deluge, occupied a period of 1656 years. It is a most affecting circumstance, that the early history of man, the history of the first born of woman, should be that of a murderer! *Proh dolor!* But such is the fact. Brief but painful is the story of Divine revelation; “Cain talked with Abel his brother, and it came to pass, when they were in the field, that Cain rose up against his brother, and slew him!” The detection of the murder, the arraignment, conviction, and sentence of the murderer, are detailed in the volume of Divine truth. What was the sentence, when the crime was so aggravated, the conviction founded, not upon *cir-*

cumstantial induction, but unquestionable evidence, and the Judge no other than “the worthy Judge Eternal?” What was the sentence, it must be asked with intense interest? Was it execution in a few hours, or days, or weeks? No, it was a reprieve for life; a life preserved by special providence. Was not this designed *in mercy to his soul*, and for the welfare of the growing family of man? His expatriation, burdened conscience, and terror of man, being thought by his unerring Judge, the punishment most suited to so flagrant a crime. These are the facts of the case; their bearing upon the question at issue is self-evident. It is scarcely necessary to refer to the language of Lamech, (Gen. iv. 23, 24,) as the passage is acknowledged to be very obscure, and it is not to be supposed that Cain would have been slain contrary to the special promise and providence of God.

The inquiry now proceeds to the patriarchal age, extending from Noah to Moses. Here we have some remarkable information contained in the Divine direction to Noah, as the father of the new world. The passage is generally considered of very great importance in reference to capital punishment, it is as follows:—“Surely your blood

of your lives will I require ; at the hand of every beast will I require it, and at the hand of man ; at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed : for in the image of God made he man," Gen. ix. 5, 6. Should this passage be viewed as imperatively enjoining capital punishment in case of murder, it does not necessarily follow that it is obligatory under the mild sway of Christianity. A very sensible writer upon this subject observes, "The punishment of murder by death, it is said, does not appear to have deduced its origin or obligation from the law of Moses alone, but to have been required by the precept given to Noah and his posterity ; ' Whoso sheddeth man's blood, by man shall his blood be shed.' I must confess, to me it appears to contain nothing more than a declaration of what will generally happen ; and in this view to stand upon the same ground with such passages as the following : ' He that leadeth into captivity, shall go into captivity ; ' ' He that taketh the sword shall perish by the sword.' The form of expression is precisely the same in each of these texts ; why then may they not be interpreted in the same manner, and considered not as *commands*,

but as *denunciations*? If so, the magistrate will be no more bound by the text in Genesis to punish murder with death, than he will by the text in the Revelation to sell every Guinea Captain to the West India Planters; and yet, however just and proper such a proceeding might be, I suppose no one will assert, that the magistrate is bound to it, by either that or any other text in the scriptures; or that, that alone would be admitted as a sufficient reason for so extraordinary a measure."*(Written in 1785.) A more modern writer observes, in reference to the scripture under review, "This text is, perhaps, rather prophetic than denunciatory; more a statement of what *would* take place, than a *command* as to what *ought* to be done; and such a supposition certainly derives countenance from the fact, that in the only recorded instance of murder prior to the Jewish dispensation, *it was not punished with death.* The murder of Abel deserves particular notice; it was the first crime of the kind that had been committed in the world; it was perpetrated under circumstances of the utmost aggravation; the punishment of it was taken by the Almighty into his own hands, and yet that which he actually in-

* Montagu on the Punishment of Death, vol. i. 293.

flicted was not death, but a species of banishment.”* 2

The Mosaic dispensation, extending from Moses to Christ, presents some very important views of the subject under consideration. It is evident that the law of Moses punished several offences capitally. The murderer, the instigator to idolatry, the manstealer, the adulterer and adulteress, the disobedient son, the sodomite, the violator of the person of another, and the sabbath-breaker, were equally punished with death. But this severity of the law, (with reverence we speak,) might be requisite for the Jews, as the Saviour said in reference to the permission of divorce, “because of the hardness of their hearts.” Now it will not be supposed for a moment, that all these severe enactments of the Jewish dispensation, are incorporated into the Christian dispensation. They are foreign to its spirit, which rules by love, not by fear. It has been well observed by a writer upon this subject, “The ceremonial law of the Jews was abolished by the death of Christ; and their civil law found its natural and necessary termination when their national polity ceased to exist. But the moral law is intended for all men,

* Dees on the Inexpediency of Capital Punishment, p. 29.

and not one tittle of it can by any possibility pass away, whilst heaven and earth endure. Christianity does, indeed, establish that law on a new foundation, and furnishes a new motive for its observance, ‘the love of Him who first loved us;’ it confirms it as a rule of life. It cannot abolish that which is in its nature eternal.”* Sir Walter Raleigh justly declared, ‘It is well observed by Master Doctor Willet, that the *moral* judicials of Moses do partly bind, and partly are left free. They do not hold affirmatively that we are tied to the same severity of punishment now, which was inflicted then; but negatively they do hold, that now the punishment of death should not be adjudged where sentence of death is not given by Moses. Christian magistrates, ruling under Christ the Prince of Peace, may abate the severity of Moses’ law and mitigate the punishment of death; but they cannot add to it to make the burden more heavy; for to show more rigour than Moses, becometh not the Gospel.”†

It may be objected by some, that the crime of murder is exempt from the sweeping repeal of the

* Pell’s Letter to the Marquess of Northampton, on the Punishment of Death proved to be Unlawful. 1835. p. 8.

† Montagu on the Punishment of Death, vol. ii. p. 117.

gospel, but with such persons the *onus probandi* lies. Why should any one be selected in preference to another? If one only, why murder? Is it not more in accordance with the genius of Christianity to enlighten and reform mankind by the powerful influence of knowledge, philanthropy, and regard to the sacredness of life, even that of a criminal, than by the sternness and sanguinary reign of penal severity, to sweep away the guilty by one fell stroke from reason, hope, and time for penitential reform? This is the point, the vital point to which all the previous observations tend; and the important question upon which the temporal weal, yea, "the eternal weal" of man depends, if unhappily found among the perpetrators of what are yet in Christian countries called "capital offences." The question returns like the echo,—"Does Christianity enjoin capital punishment for any offence?" Does it hurry a criminal prepared or unprepared into the presence of "the worthy Judge Eternal," before He, with whom are the issues of life and death, calls his disembodied spirit? How momentous the inquiry! Its investigation, in the calm and pious spirit of a humble inquirer after truth, must meet with general approbation. "The question!" "The

question!" before every house in the British empire, yea, before the whole family of man, we repeat it, is,—“ Does Christianity enjoin capital punishment for any offence?” With considerable hesitation for the apparent boldness and temerity of the assertion, and with deep emotion of mind relative to the results of the national and universal adoption of such a view of criminal jurisprudence, it is humbly conceived and affirmed,—that Christianity neither enjoins nor permits capital punishment in any case.

This appears from its profound silence upon the subject. The antediluvian age, we have seen, recorded the crime of the first murderer, but mercy was extended to his life, to give him space for repentance, and to “ fit him for his passage” to an eternal state. The Patriarchal and Mosaic dispensations, it is presumed, give direction to put to death the murderer; but where is such an injunction recorded in the New Testament? Have the fatal words dropped from the lips of Him, who said to the adulteress, (though guilty of death by the law of Moses,) “ Neither do I condemn thee, Go, and sin no more?” The Gospel, it is humbly conceived, contains no such awful accents. Where, then, in the whole volume of the New

Testament, is found the tremendous authority to put any man to death? If no such passage can be produced either by the legislator or the divine, may it not be considered a demonstration of the merciful truth, that, under the mild sway of the Prince of Peace, no man should be put to death? To assert, that as murder was punished with death under the law of Moses, so it should be under the Christian dispensation, is assuming what it is humbly presumed can never be satisfactorily proved. Where is the evident, indisputable connexion of the two dispensations, that, that which is predicated of one, is necessarily obligatory in the other? It is an axiom, that "he who proves too much, proves nothing." This position would disfigure Christianity with the enactments of a dispensation evidently fitted for a people in an infantile state. It has been well observed by a writer, previously quoted, "The institutions of Moses were made for the regulation of a very peculiar people, and for very particular purposes. Their whole civil constitution seems to have been admirably adapted to the progress then made in political advancement; but to have been so contrived as to keep them where they were, till the opening of a more perfect dispensation." The

silence, the profound silence of Christianity in reference to capital punishment, appears worthy of the most grave consideration of every friend of man.

The *principles* of Christianity appear opposed to capital punishment. These principles respect the being, perfections, and providence of Almighty God; the rational, accountable, and immortal nature of man; the existence of an eternal state of retribution, &c. &c. These principles invest man with a character, which viewed in reference to his immortality, places his life beyond the powers of human legislation. His life, affecting as it does his eternal destiny, ought to be held sacred; and this sacredness of the life of a criminal would tend to promote its inviolability in society, more than ten thousand public executions. Indeed the reverse would be the effect of such a prodigal destruction of man. It has been very justly observed, that "the Creator and Lord of life has not invested monarchs, or any other description of rulers, or nations, or other communities of mankind, however legitimate, venerable, or powerful, with the right to exercise an unlimited discretion of enacting the punishment of death for whatever offences they may think fit;

but, that the competency of human legislatures for such legislative decisions is limited by the natural and revealed law of God." "It is to little purpose to urge, that men may agree to give up their natural rights for their mutual benefit, and to hold their lives and liberties upon certain terms and conditions, on the breach of which they should be forfeited; because though this argument will hold with regard to liberty and property, it will not hold with regard to life; of which, God alone is the sole disposer, and over which we have no right in ourselves, or in other men."*

The *precepts* of Christianity, also, are opposed to the destruction of human life. The language of the Divine Legislator, condemnatory of the severe and sanguinary code of the old law, and enjoining mercy and forgiveness, is very observable in reference to the subject under discussion: "Ye have heard that it hath been said, an eye for an eye, and a tooth for a tooth. But I say unto you that ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have thy cloak

* Warner's Life of Sir Thomas More. See Montagu, vol. iii. p. 294.

also. And whosoever shall compel thee to go a mile, go with him twain. Ye have heard that it hath been said, Thou shalt love thy neighbour, and hate thine enemy. But, I say unto you, Love your enemies, bless them that curse you, do good to them that hate you and persecute you," Matt. v. 38—44. Exod. xxi. 20—25. It may be objected that these precepts refer to personal and not to public offences; not altogether so; for the magistrate executed the *lex talionis*, or law of retaliation. But if this objection were allowed, it would not affect the bearing of these precepts. They are averse in their spirit to sanguinary legislation.

The *genius* of Christianity is diametrically opposed to the sanguinary spirit of the criminal code. How was the advent of the Messiah ushered into the world? "There was with the angel a multitude of the heavenly host praising God, and saying, Glory to God in the highest, and on earth peace, good will towards men." What was his character? "He went about doing good." What is the view which the Scriptures give of his mission? "Hereby perceive we the love of God, because he laid down his life for us: and we ought to lay down our lives for the brethren." What is

the spirit which it inculcates and cultivates ? "Dearly beloved, avenge not yourselves, but rather give place unto wrath ; for it is written, Vengeance is mine, I will repay, saith the Lord. Therefore if thine enemy hunger, feed him ; if he thirst, give him drink ; for in so doing thou shalt heap coals of fire on his head. Be not overcome of evil, but overcome evil with good." "Let us," says a writer upon this subject, "consider what is the spirit and genius of the Gospel dispensation. In the writings of the New Testament, we shall not find a code of criminal law, but we shall find there certain grand and immutable principles adequate to direct us in every practical case ; and what part soever of our conduct is inconsistent with these must be wrong. Let the enactments of a legislature embody that great principle of benevolence which is the essential of Christian morality, to establish which on a firm basis, is the design of every thing in the system that bears a social character. The punishment of death can only be justified by assuming that, in certain cases, vengeance is a sacred duty. It contains no principle but that of retaliation ; which has been abrogated and superseded, in express terms, by Jesus Christ himself. There is no accordance between

the benevolence of Christianity, and that merciless system which, in this country, punishes offences with death.” *

The *prospects* of man in a future state show the unchristian character of capital punishment. Christianity teaches the immortality of the soul—a state of retribution and reward, eternal in its duration—that heaven is a prepared place for a prepared people—that “now is the accepted time, now is the day of salvation.” What thoughtful mind can reflect upon the moral state of the majority of criminals, and how much cause there is to fear that they are “quite unfurnished for that world to come,” without feeling the greatest possible repugnance to the execution of such unhappy wretches? This view of the subject is probably the most affecting and weighty, and it has been very forcibly observed in the letter addressed to the Marquess of Northampton, before quoted: “It is a very important inquiry, whether or not the punishment of death can have a fatal influence on the destiny of the soul, producing what may emphatically be termed its ‘death!’ On this subject we should both think and speak

* *Pell’s Letter to the Marquess of Northampton, on the Punishment of Death*, pp. 15—17.

with humility, if not with terror. If it could be proved, that during the lapse of revolving ages, from the time that man began his existence, either by wanton murder, or legal sacrifice, one immortal spirit has been plunged into torment, which, had life been spared, would have found a different fate, I might close the argument. It is the consideration that the future happiness or misery of the human spirit depends upon the character it sustains when it leaves the present state of being, which, above all others, ought to prevent our so punishing the crime of murder, as to produce or risk such irretrievably awful results, since souls are of equal value in the sight of God, and at his disposal only. Murder is indeed a most horrible offence, yet even for *such* an offence was the blood of Christ shed as an atonement; but without repentance and faith no sinner can be saved, and without life there can be no repentance, since life is space given for it. By what authority do we limit that space ordained by the Almighty, to exemplify the triumphs of Divine grace? In both crime and punishment, an act is committed, the effects of which can never be remedied. In the hurry and tumult of legal terror, just in that state of mind which renders calm reflection im-

possible, we pass the convict from an earthly, and perchance, erring tribunal, to his last audit at the bar of his Judge. We send our victim to his account, and he may go to it hardened and impenitent, in spite of the spiritual counsel with which we furnish him; and if by a certain *hour* the great work of conversion is not completed—if by a specified *moment* the dreadful fortifications of ignorance, in which the prince of darkness has intrenched himself, be not demolished, we then seal this poor bewildered wretch to a destiny of hopeless damnation! But can we be certain that Divine grace would never have reached his heart? The silence and darkness of Eternity shroud this subject in uncertainty and gloom: but in forming our rules of conduct, we are to reverence the great Governor of the universe, and not insult him in the nearest precincts of his throne—the most valued portion of his dominions—the empire of the human soul!”* The mind of the writer is almost overwhelmed with this view of the subject, and doubts not that his readers so much sympathize with him, that further observation is not requisite. Who that considers the general character of criminals, and the circumstances in

* Pell's Letter, pp. 12—14.

which they are, and have been generally hurried out of time into eternity, but must irresistibly feel a desire to pause in the prosecution of this vital, this “high argument,” and “awake to meditation.”

This chapter may be closed by a selection of some further opinions of eminent men favourable to the decrease of capital punishment, and even for its entire disuse.

“I prohibit that any man should be put to death for any cause whatever.”—*William the Conqueror.*

Sir T. Hytton “held that it is not lawful neither for the King of England, nor for any other Christian prince to make any law or statute for the punishment of any theft or any other crime, by which law any man should suffer death. For he said, that all such laws are contrary to the gospel, which wills no man to die.”—*Sir T. More.*

“It is not unworthy of remark, that those just and benign views of Sir Thomas Hytton, regarding criminal jurisprudence, appeared at an era when the light of Christian intelligence was beginning to brighten our moral horizon—at the dawn of the Reformation: nor is it less deserving our

regard, that their adoption by the State, might have saved even More himself from the tyrant's axe.”—*Morning Herald.*

Mr. Wilberforce, in his place in Parliament, said, “That he well remembered a great and lamented public character, (Mr. Pitt,) at an early period of his life, intended to have a digest made of the whole criminal code, with a view of lessening, in a great degree, the number of capital punishments which it contained, and objections to which it was impossible to confute.”

“It has long since been observed, that after a man is hanged, he is good for nothing, and that punishments invented for the good of society ought to be useful to society. It is evident, a score of stout robbers condemned for life to some public work, would serve the state in this punishment, and that hanging them is a benefit to nobody but the executioner.”—*Voltaire.*

“Whether hanging ever did, or can, answer any good purpose, I doubt: but the cruel exhibition of every execution day, is a proof that hanging carries no terror with it.”—*Sir W. Meredith.*

“Where the injury is only slight, capital

punishment ought not to follow. The law as it now stands is very defective.”—*Lord John Russell.*

“ In a reign of tranquillity, in a form of government approved by the nation, where all power is lodged in the hands of a true sovereign, where riches can purchase pleasures and not authority, there can be no necessity for taking away the life of a subject.”—*Marquess Beccaria.*

“ Regarding capital punishment, which, of late, has occupied public attention so much, it has been justly remarked, that it is dangerous to liberty, inasmuch as it puts a weapon into the hands of tyrants, of which they have never failed to make abundant use in the oppression of the people. Murder, on those occasions, arrays itself in the spotless ermine of Justice, covers itself with her robes, mounts her sacred seat, borrows her holy language, adopts her forms, calls its iniquitous sentence the judgment of the law, and even when it stretches forth its bloody hand for execution, it wields her own weapon, and inflicts on the innocent victim no other punishment than that which previous laws had provided for guilt.”—*Livingstone.*

“The worst use you can turn a man to, is to hang him.”—*Horne Tooke*.

“The question seems to me one of ‘social progress,’ rather than fixed principle, applicable at all times and under all circumstances. *Death* must gradually melt away, like *slavery and war*, before the sun of Christianity.”—*Sir E. F. Bromhead*.

“The opinion of the people ought to regulate the measure of punishment.”—*Macaulay*.

“He had on a former occasion stated his desire to see the principle of these bills extended to all offences, with the exception of murder; entertaining doubts, whether capital punishment ought to be retained even for that.”—*Lord Brougham in Parliament, July 14, 1837*.

CHAPTER III.

Investigation of the second part of the argument, “*Whether it is expedient to abolish capital punishment, if the law leave the Magistrates at liberty to do so?*”—It is presumed, that it is highly expedient, as it respects the interests of political economy, morality, and religion—Sentiments of eminent men upon the subject.

THE lucid view of the important subject of capital punishment, condensed in the two inquiries before us, is very acceptable to the writer, as forming a clue to the discussion of its abolition. For several years his mind has been deeply interested, and sometimes (particularly when the Assizes return) almost overwhelmed, with the momentous responsibilities of the penal code. Having investigated the first view of the subject, “*Whether the civil magistrate is at liberty, under the law of God, to dispense with capital punishment in cases of wilful murder?*” we now proceed to the second, “*Whether it is expedient to abolish the same, if the law leave the Magistrate at liberty to do so?*” To this interesting inquiry, it is humbly, but confidently

answered, That it is highly expedient. This appears from *the bearing of the question upon the interests of political economy.*

This view of it is extensive in its range, and infinitely important in its results. This will appear by considering *the sanguinary character of the criminal code* of former generations. "Thus," says Lord Kaimes, "by an Athenian law, a man committing sacrilege, or betraying his country, was banished, with all his children. When a tyrant was killed, his children were also put to death. By the law of Macedon, the punishment of treason was extended against the relations of the criminal. By a Scythian law, when a criminal was punished with death, all his sons were put to death with him, his daughters only were saved from destruction. Lucan, for a crime committed by the king, thought it not unjust to destroy all Egypt. It is still more surprising that this savage and absurd practice continued very long in some parts of the Roman empire, though governed by laws remarkable for their equity. In Japan, it is the practice to involve children and relations in the punishment of capital crimes."* Hume states, that "in England, during the reign of Henry VIII. *two*

* Montagu, vol. iii. p. 391.

thousand criminals, on an average, were executed annually for theft and robbery, beside other malefactors!" Sir Thomas More informs us, that it was not uncommon to see twenty thieves hanged at once on the same gibbet! By a poor-law Act of the 27th Henry VIII. "a sturdy beggar is to be whipped the first time, his right ear chopped the second, and if he offend, (by begging,) to be sent to the next gaol till the Quarter Sessions, and there to be indicted for wandering, loitering, and idleness, and if convicted, shall suffer execution of death, as a felon and an enemy to the commonwealth." Even in that iron age the severity of the law rendered it inoperative. When the difference of the population of this country three hundred years since is compared with the present population, and considered in reference to the recent executions,* the sanguinary spirit of days gone by will be very apparent.

* "Executions in England and Wales since 1820:—For four years ending 1823, 372; four years ending 1827, 229; four years ending 1831, 230; four years ending 1835, 155.

372

229

230

155

— 986 Total in 35 years

A French writer, who published a work entitled, “*Description des Royaulmes d'Angleterre et d'Ecosse*,” in 1558, did not fail to animadvert upon the severity of our criminal laws. He says, “In this country you will not meet with many great lords the heads of whose near relatives have not been cut off. Truly I would love better to be (with reverence to my reader be it spoken) a swineherd, and preserve my head; for this evil falls heavily on the heads of great lords. You here see noblemen in great pomp and magnificence for a time, and almost on the turn of the hand you see them under the axe of the executioner. On this account they have a proverb which says, that there have been many, who, if they had remained humble and in low estate, or in exile, would have lived securely and without constraint; but, being exalted, and made great lords, they fell into peril and confusion. This certainly has been as much the case in this country as in any kingdom in the world.” After contrasting the happy state of France in this respect as compared with England, he proceeds :—

Executions in London and Middlesex, from 1827 to 1835 :—
Three years ending 1829, 63; three years ending 1832, 16;
three years ending 1835, 2.”—*Companion to Almanac*, 1837.

"In England the administration of justice is very severe; for a man for almost nothing may be put to death; whilst in France they would condemn a man for an offence to be whipped, they would certainly in England sentence him to death. True it is, they have but two kinds of punishment, namely, hanging and beheading; and the malefactors have as much inducement to commit great crimes as minor crimes, which ought not to be the case. The practice is better in France, for there are several punishments, according to the demerit of the offender. In this island they have neither the wheel nor any other kind of torture. They always put criminals to death by hanging them without the town on gibbets of wood, but the nobles are beheaded in London, to excite the terror of the people."

The inefficacy of capital punishment to prevent crime, is worthy of observation. The following account of the state of things in the times of Henry VIII. and Elizabeth, is very affecting to every humane mind. "Harrison assures us that Henry VIII. executed his laws with such severity, that 72,000 'great and petty thieves were put to death during his reign!' He adds, that even in Elizabeth's reign, 'rogues were trussed up apace;'

and that there was not ‘one year commonly wherein three or four hundred of them were not devoured and eaten up by the gallows in one place or other.’ In spite of these sanguinary punishments, the country continued in a dreadful state of disorder. Every part of the kingdom was infested with robbers and idle vagabonds, who refusing to labour, lived by plundering the peaceable inhabitants; and often strolling about the country in bodies of three or four hundred, they attacked with impunity the sheepfolds and dwellings of the people.”—*History of the Middle and Working Classes.*

In the days of Elizabeth it was observed and regretted, “that at the time of doing execution of such as had been attainted of any murder, felony, or other criminal cause, ordained chiefly for terror and example of evil doers, people persevered in their felonious sleights and devices.”

That eminent advocate of the abolition of capital punishment, the celebrated Marquess Beccaria, very forcibly observes, “If punishments be very severe, men are naturally led to the perpetration of other crimes, to avoid the punishment due to the first. The countries and times most notorious for severity of punishments, were always those in

which the most bloody and inhuman actions; and the most atrocious crimes were committed; for the hand of the legislator and the assassin were directed by the same spirit of ferocity; which, on the throne, dictated laws of iron to slaves and savages, and in private, instigated the subject to sacrifice one tyrant to make room for another."

"The Rev. T. Roberts, of Bristol, in his visits to prisons in England from time to time, has fallen in with many convicts under sentence of death: in 167 instances he inquired of the malefactor, whether he had ever witnessed an execution? It turned out that *all of them, excepting three*, had been spectators in the crowd upon these melancholy occasions, which the legislature designed to operate as warnings to the profligate. So much for the 'efficacy' of sanguinary examples in deterring from crime!"

"In the history of forgery, it is a remarkable fact that one of the jury who tried the late Dr. Dodd, was himself, within *two years* afterward, guilty of the same offence, tried in the same court of justice, the Old Bailey, and executed on the same gallows, Tyburn. The terror of death was in this case as inefficient to prevent the crime, as in the instance of Mr. Fauntleroy. Have we not found,

by long and sad experience, that the blood of criminals is the seed of criminality; and that by inflicting capital punishments for civil crimes, the depravity of mankind, instead of being cured, hath been greatly increased? It is a standing observation in China, (and China has enjoyed a very long experience,) that in proportion as the punishments of criminals are increased, the empire approaches to a revolution.” *

Mild laws are most effective in suppressing crime. Writers upon criminal law are full, cogent, and convincing on this view of the subject. It is very grateful to observe the progress of these views, and a few extracts may suffice to show their propriety. Lord Bacon, in his day, observed, “There are no worse snares than the snares of laws, especially penal; if they be immense for number, and, through the alterations of times, unprofitable, they do not present a torch, but spread a net for our feet. There are some penal laws fit to be retained, but their penalty is too great; and it is ever a rule, that any over great penalty, besides the acerbity of it, deadens the execution of the law. Let there be no rubrics of blood.”

“Nothing could be more obvious than that, if

* Montagu, vol. iii. p. 290.

the same punishment were to attend the convict for burglary as for murder, robberies would generally be attended with murder. Criminals would take care to prevent the appearance of any witnesses against them at a future trial.” *

“ True it is that we have found by woeful experience, that it is not frequent and often punishment that doth prevent; for, justice truly preventing is better than justice severely punishing, which agrees with the rule of the physician for the safety of the body,—caution is better than cure. And it is a certain rule that you shall see those offences often committed, which are often punished, for the frequency of the punishment makes it so familiar that it is not feared. What a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows; insomuch that, if in a large field, a man might see together all the Christians that, in one year throughout England, come to that untimely ignominious death; if there were any spark of grace or charity in him, it would make his heart bleed for pity and compassion.” In the margin to this passage are the words, ‘*sta, parlege, plora;*’ stand, read, weep; and this quotation

* Montagu, vol. iii. p. 181.

from Seneca, “*Non minus principi turpia sunt multa supplicia, quam medico multa funera*; many punishments are not less disgraceful to the prince, than many funerals to a physician.”—*Coke on the Criminal Law*.

We may fearlessly assert with our great moralist, Dr. Johnson: “He who knows not how often rigorous laws produce total impunity, and how many crimes are concealed and forgotten, for fear of hurrying the offender to that state in which there is no repentance, has conversed very little with mankind.”

Another argument for the discontinuance of capital punishment is, that *it is very dangerous in times of popular tumult and revolution*. Several writers upon criminal jurisprudence have dwelt upon this view of the subject in very eloquent and impressive strains. “When a country is about to be exposed to the convulsions of anarchy, or the iron rule of despotism, the character of these visitations will often be sanguinary, or comparatively mild, according as the penalty of death happens to be sanctioned or repudiated by the law. At such periods, no doubt, the law attracts little attention, and receives less respect; but it is much easier for the demagogue or the tyrant, when he

seeks the destruction of his political enemies, to avail himself of punishments which are in use, than to revive those which have been long abrogated, and which are, in consequence, repugnant to the habits and feelings of the community. We may have little reason to anticipate the infliction of such calamities upon our country; but the period of commotion and discord may arrive, and it becomes us therefore to employ our time of security and peace, in rooting up any institution which is not absolutely essential to our safety, and which would then be perverted to the purpose of sealing with our blood the destruction of our liberties.” *

“ History presents to us the magic glass on which, by looking at past ages, we may discern future events. It is folly not to read; it is perversity not to follow its lessons. If the hemlock had not been brewed for felons in Athens, would the fatal cup have been drained by Socrates? If the people had not been familiarised to scenes of judicial homicide, would France or England have been disgraced by the useless murder of Louis or of Charles? If the punishment of death had not been sanctioned by the ordinary laws of these

* Dees on the Inexpediency of Capital Punishment, p. 28.

kingdoms, would the one have been deluged with the blood of innocence, of worth, of patriotism, and of science, in her revolution? Would the best and noblest lives of the other have been lost on the scaffold in her civil broils? Would her lovely and calumniated queen, Malesherbes, the learned Condorcet; would religion, personified in the pious ministers of the altar—courage and honour, in the post of high-minded nobles—and science in its worthy representative, Lavoisier; would the hecatomb of loyalty and worth have been immolated by the stroke of the guillotine; or Russell or Sydney, and the long succession of victims of party tyranny, by the axe? The fires of Smithfield would not have blazed; nor, after the lapse of ages, should we yet shudder at the name of St. Bartholomew, if the ordinary ecclesiastical law had not usurped the attributes of Divine vengeance, and by the sacrilegious and absurd doctrine, that offences against the Deity were to be punished with death, given a pretext to these atrocities. It was proposed in the French Constituent Assembly, in May 1791, to abolish the punishment of death. The motion was rejected, and the greater part of those who voted against it, themselves perished on the scaffold! Had the Constituent Assembly

decided otherwise, it is very probable that the judicial murders which disgraced the French revolution would never have been committed. Turning again to our own country, let us ask, would the innocent Anne Boleyn, the amiable Sir Thomas More, or the learned and enterprising Raleigh, have been delivered to the executioner, if the capital punishment of felons had not familiarised the minds of men with acts of judicial homicide? If the punishment of death had been previously banished from our laws, would it have been restored, that the sacrifice of the unfortunate Mary Queen of Scots might appease the jealous spirit of her rival? Can any one suppose that Lord Stafford would have been executed for *constructive treason*, if treason itself had not been capitally punished in the reign of Charles I.? or that a lawful monarch would have been condemned to death by his own subjects, had the laws pronounced the life of the meanest criminal too sacred to be touched? It is not, I think, too much to assert, that if the scaffold had been previously abolished, it would not have been re-erected for Stafford or Charles. The history of every age and country furnishes examples of the dreadful extent to which the abuse of this punishment has

been carried under the name of justice. Every nation has wept over the graves of patriots, heroes, and martyrs, sacrificed by its own fury. Every age has had its annals of blood!"* How is the recurrence of such calamities to be avoided? Let the axe be laid at the root of "the upas tree of legislative extermination," and let the "inviability of life" be inculcated from generation to generation.

The beneficial effect of the abolition of capital punishment in different countries, is deserving of serious consideration. It is to be regretted that so few Christian countries have made the experiment, or made it upon so small a scale, or for so short a time. But the experiment is deeply interesting, and worthy of more general adoption. The following extracts appear interesting:—

"Elizabeth, Empress of Russia, pledged herself, on mounting the throne, never to inflict the punishment of death, and she kept her word. Peter III. was not less frugal of the blood of his subjects. And Katherine very rarely caused it to be shed by the hand of the law; never, except in cases of high treason."—*Pastoret.*

"In Tuscany during twenty years the punish-

* Wrightson on the Punishment of Death, p. 20—57.

ment of death was altogether abolished by the Grand Duke Leopold. Buonaparte afterwards had it restored. On comparing three successive periods of twenty years each, in the first period capital punishment existing—in the second period abolished—and in the third again restored, as above mentioned,—it is found, that fewer crimes, and fewer murders, were perpetrated in the middle twenty years, while no executions took place, than in either the preceding or succeeding twenty years while the scaffold was in use.”—*Livingstone.*

In Belgium, capital punishment has been abolished since 1829.

“During seven years that Sir James Mackintosh was Recorder of Bombay, the punishment of death was never once inflicted by the court over which he presided. In this period there were but six convictions for murder, whilst in the preceding seven years there had been no less than eighteen convictions for that crime, notwithstanding the numerous executions. These facts correspond with the important results obtained during twenty years in Tuscany, as reported by M. Berlinghieri, the Tuscan Ambassador at Paris.”—*Lucas de la Peine de Mort.*

“It is a forcible objection to the punishment of

crime, by the forfeiture and sacrifice of life, that such a penalty may be advantageously abolished. The experience has, in fact, been tried with advantage and success. In Russia, in Tuscany, in Philadelphia, and in other states of North America, a milder and more equitable process has been adopted, and has been effectual to prevent the increase of crime, and to ameliorate the condition and character of the offender.”*

“A Parliament was convened in the island of Tahiti, in 1824, to form a code of laws. After deliberate discussion, it was unanimously resolved that man’s blood ought not to be shed under the sanction of laws made by a Christian legislature, and that murderers should be punished by perpetual banishment to an uninhabited island.”†

Among the arguments against capital punishment, it should not be forgotten that it has failed to an extraordinary degree. Experience, at various periods, and in different countries, is against its infliction. Crime has flourished most under sanguinary laws. Compare the states in which this penalty is either abolished, or but rarely executed, (such as Tuscany, or Holland, or the United

* Williams on the Inexpediency of Capital Punishment, p. 18.

† Tyerman and Bennet’s Voyages and Travels, vol. ii. p. 80.

States of America,) with England. Facts are stubborn things, and demand the investigation of all who are interested in their country's weal.

The abolition of capital punishment is intimately connected with *the interests of morality*. It is disgusting to the best feelings of society. The repugnance of the Icelanders to capital punishment appears very great. A traveller states, “The punishments for capital crimes are the same as in Denmark; and the criminal is not hanged, but beheaded. It is a fact, however, that of late years no Icelander has been found who would undertake the office of executioner! so that it has been necessary for the very few who have been sentenced to suffer death to be conveyed to Norway, to receive the punishment due to their crimes.”* Who so unpopular a character in England as the man vulgarly called “Jack Ketch?” When will such a person be unknown in this civilised country?

Dr. Paley very forcibly observes, “Barbarous spectacles of human agony are justly found fault with, as tending to harden and deprave the public feelings, and to destroy that sympathy with which the sufferings of our fellow-creatures ought always

* Journal of Tour in Iceland, 1809.

to be seen ; or if no effect of this kind follow from them, they counteract in some measure their own design, by sinking men's abhorrence of the crime into commiseration of the criminal.”* “The spectacle which the gallows affords hardens and brutalizes the bad, while it offends and disgusts the good. If the criminal display Christian penitence, the pity of the spectators is roused, and compassion for the criminal is akin to hatred of the laws. If he show insensibility, it removes, instead of exciting terror. If he conduct himself with fortitude, the man, who but a few moments before was detested for his crimes, is now admired and extolled for his heroism.”

Cicero has a very powerful passage confirmatory of the sentiment advocated. “*Hanc tollite ex civitate, judices !*” &c. “Away with (cruelty) from the state. Allow it not, O judges ! to prevail any longer in the commonwealth ! It has not only the fatal effect of cutting off so many of your fellow-citizens in a most atrocious manner, but it hath even banished from men of the mildest disposition the sentiment of mercy, by the familiar practice of slaughter !” But the propriety of this view of the subject appears evident, and we may adopt the

* Montagu on the Punishment of Death, vol. i. p. 33.

language of the editor of *The Dublin Weekly Herald*, March 8, 1839: "We fearlessly repeat our belief, that public executions have a most degrading tendency, and that experience incontrovertibly proves the fact. We are convinced that their abrogation would be a blessing to the country.* We believe that as the gambler becomes reckless of his own life, and also of the lives of others, thus many have been sacrificed to prevent detection who otherwise would have been spared."

It is productive of sanguinary feelings. This we have seen forced conviction in the enlightened mind of Cicero, and it forms a very powerful argument against capital punishment. The following affecting account of murders and murderous assaults, apparently arising from a recent execution, is equally deserving the attention of the politician, the philanthropist, and the Christian. "Crimes of this description are so rare in Scotland, that it is seldom we hear of the extreme penalty being resorted to for their suppression. An execution, however, having recently taken place at Paisley,

* "He (Dr. Lushington) rejoiced to see that the number of executions was yearly diminishing, as he believed that every execution brought an additional candidate for the hangman."—*Par. Debates, May 19, 1837.*

(being the only one throughout Scotland during the year 1837,) it was almost immediately succeeded by a number of murderous assaults in the neighbourhood, as the following dates will show. The execution at Paisley, of William Perrie, happened on the 18th of October; that day week Agnes Colquhoun was murdered, and thrown into the Clyde. The same day, Mr. Angus M'Donald, of Glasgow, disappeared with property on his person; and, from evidence already before the public, is believed to have been murdered, although the body has not yet been found. A few days after, Nov. 11, a gamekeeper, on the estate of Sir W. Anstruther, unable to overtake Dickson, and another poacher, in their flight, wantonly shot them both, for which he has been sentenced to several months' imprisonment. Soon afterwards, Nov. 26, another man, named Daniel Campbell, was fired at and dangerously wounded, between Greenock and Paisley, by two villains, who made their escape. It appears, therefore, that the execution of Perrie, if it has produced any effect, has been a provocative to crime."—*Glasgow Argus of Jan. 18, 1838.*

Capital punishment is *demoralizing in its effects*, and hence the propriety of its abolition. "It has

been asserted," says T. F. Buxton, Esq. "that executions produce a great effect, but that the effect cannot be calculated precisely. I meet this by direct contradiction; contending that the effect is small, and may be calculated by any one who will expose his feelings to the pain of witnessing a public execution. There he will see how little solemnity and how little seriousness accompany this awful exercise of power. It is notorious that executions very rarely take place without being the occasion on which new crimes are committed. A pickpocket, being asked by the Chaplain of Newgate how he could venture on such a deed at such a time, very frankly replied, 'That executions were the best harvests that he and his associates had, for when the eyes of the spectators are fixed above, their pockets below are unprotected.'"^{*}

"Correction and example," says the unhappy Dr. Dodd, "are the only proper objects of punishment. It is plain that the former can never be attained by the death of the sufferer, and for the latter we are every day assured that public executions are not of the least avail. The common people flock to them as to a spectacle in which they are

* Speech of T. F. Buxton, Esq. M.P. March 1819, in support of the motion of Sir James Mackintosh.

gratified, and we constantly hear of crimes not less flagitious than those for which the criminal is to die, perpetrated even at the very place and moment of his punishment.”* It was well observed by Justice Blackstone, that “sanguinary laws are a bad symptom of the distemper of any state, or at least, of its weak constitution. The laws of the Roman kings, and the twelve tables of the Decemvir, were full of cruel punishments. The Porcian law, which exempted all citizens from the punishment of death, silently abrogated them all! In this period the republic flourished. Under the Emperors severe punishments were revived, and then the empire fell.”† “The gibbet with its appendant human scare-crow was once not an unfrequent object of English scenery, as the banks of the Thames bear witness, even to our own time, where foreigners, entering the beautiful and majestic river, have been shocked at the symbolic horrors of our “raw head and bloody bones” legislation; yet these exhibitions did not prevent, or even diminish the crime of murder. On the contrary, it went on increasing; for this

* Dr. Dodd’s Sermon on the Frequency of Capital Punishments, inconsistent with justice, sound policy, and religion, page 7.

† Montagu, vol. i. p. 15.

sort of exhibition, as all experience proves, never reforms, but brutalizes, just as the breaking on the wheel, and exposing the body afterwards under the old *regime* of France, only tended, by hardening the feelings of the spectators, to multiply the cases of murder committed under the most atrocious circumstances.”* “The history of public punishments in every age and country, is full of facts which support every principle that has been advanced. What has been the operation of the *seventy thousand* executions that have taken place in Great Britain, from the year 1688 to 1787, upon the morals and manners of the inhabitants? Has not every prison-door that has been opened to conduct a criminal to public shame and punishment, at the same time unlocked the bars of moral obligation upon the minds of ten times the number of people?”† What has been the effect of the sanguinary system of days gone by, “in those times when blood, and nothing but blood, and pounds of flesh were required for every offence?” Morality has suffered by such exhibitions. The demoralizing effect of capital punish-

* The Punishment of Death, vol. ii. p. 7.

† Montagu, as above, vol. i. p. 281.

ment is unquestionable. “ The people are taught by institutions, the doctrine of vindictive punishment, and that they learn the lesson, is made a plea for not ‘ bettering their instruction.’ This can never be, while the public spectacle of the mortal agonies of even the vilest offenders, constitutes part of the training of the multitude. The most ignorant will acquire respect for human life, when the law recognizes its sacredness.”

In conclusion, it may be urged as “ the height of this high argument,” that *the interests of religion are injured by capital punishment.* This will appear by considering the generally unprepared state of criminals for a future state. The views of Dr. Ford, late Ordinary of Newgate, must be considered as entitled to serious consideration. In a letter to Mr. Bentham, he says, “ From every thing I have witnessed on these melancholy occasions, I am decidedly clear, that executions, managed as they are at present, answer no end whatever, either for punishment or example. You may wish to learn the effect which sentence of death has on the convict, in causing him to set about the necessary work of repentance. From the moment he quits the Court, every engine is set to work, both by him and his friends,

to obtain a respite. During these exertions, vain and futile are all the attempts of the Ordinary to prevail on him to reflect on his awful situation with respect to both worlds. The flattering hopes in his own breast are puffed up by his friends into a certainty of saving his life, and till the very moment in which the unexpected warrant for execution arrives, death is the farthest thing from his thoughts. What is to be done now? Are a few days sufficient to make his peace with God? All is now hurry, confusion, and despair. Is this a time to instruct him in religion? Alas! he does not perhaps know the meaning of the word. At length the long dreaded morning arrives; he knows he must die. He mounts the drop—resolute to appearance—bows to the spectators—shakes hands with the Ordinary, and is ‘launched into eternity.’”* “Ah! how unfurnished for that world to come!” A more modern writer expresses himself in similar terms. “To see a man cut off, by the sentence of the law, with all his transgressions on his head,† ending his life in

* Montagu, vol. ii. p. 188.

† Dr. Ford mentions the following fact of a reprieved criminal. “It was an arduous matter to get him reprieved, but

reckless blasphemy, in stupid insensibility, in hopeless despair, or under the influence of that too often deceptive repentance, which is the offspring of terror; and which we may learn to appreciate at its just value, by a reference to the after life of most of the criminals who unexpectedly receive a pardon, is indeed too tremendous a spectacle to be witnessed or reflected upon, without the deepest emotion."* This view of the subject must be affecting to every thoughtful and pious mind, and shows its momentous nature.

The innocent sometimes suffer, and no reparation can be made for so awful an error of the fallibility of human justice. "A murder committed with the sword of justice, is the most horrid phenomenon in a state. And in all well-regulated states, the maxim, 'Better ten guilty escape, than that one innocent be punished,' has been held unquestioned."—*Burgh.*

"There are no criminal records," says Bentham, "which do not present examples too memorable of fatal mistakes; and those which by a coincidence it was done. Meeting me a few days afterwards he said, "Here are the books you so kindly lent me, and having no further use for them, I return them with many thanks."—*Montagu, vol. ii.* p. 188.

* *Dees on Capital Punishment*, p. 22.

of singular circumstances have come to light, must make us suspect many others which were never discovered." It has been forcibly observed by a writer just quoted, "The penalty of death is incapable of remission. The guilt or innocence of an accused person is not submitted to the decision of a super-human being, incapable of being influenced by passion, or misled by false or mistaken testimony ; but it is a question to be determined by twelve men, whom innumerable circumstances may lead to commit injustice, whether intentionally or not. Sometimes the general indignation of the people may be aroused by the perpetration of an atrocious crime, and may lead to the conviction, on insufficient evidence, of the first person to whom suspicion chances to attach ; sometimes the innocent man may be condemned by a chain of perjured testimony, so consistent in parts, and so uncontradicted by other evidence, that a jury cannot avoid giving credence to it ; and sometimes he may be oppressed by a concatenation of circumstances, the weight of which he finds it impossible to remove by explanation, and which appears to be irreconcilable with that innocence which he vainly attempts to establish by his uncorroborated protestations. No form of trial,

no mode of collecting evidence, can ensure us from the possibility of these terrible mistakes.”* The following affecting account of one of these errors is very appalling :—“ I myself defended three brothers of the name of Cremming, within the last ten years. They were indicted for murder. The evidence was most unsatisfactory. The Judge had a leaning in favour of the Crown prosecution, and he almost compelled the jury to convict them. I sat at my window as they passed by, after sentence of death had been pronounced ; there was a large military guard taking them back to jail, positively forbidden to allow any communication with the three unfortunate youths. But their mother was there, and she, armed in the strength of her affection, broke through the guard. I saw her clasp her eldest son, who was but twenty-two years of age—I saw her hang on her second, who was not twenty—I saw her faint when she clung to the neck of her youngest boy, who was but eighteen—and I ask, what recompence could be made for such agony ? They were executed—and,—*they were innocent !*”† Such a fact speaks volumes. Unless the judgment of man were infallible, ought

* Dees on Capital Punishment, p. 23.

† O’Connell’s speech at Exeter Hall, June 1832.

he to put any one to death? Religion is injured by such appalling injustice. She is also opposed to the recklessness of hurrying men into another world, doubtful whether they are prepared or unprepared. "Dying as those unhappy wretches often do, who knows what their future lot may be?"—*Sir W. Meredith.*

The late venerable Wilberforce made a remark during a debate in the House of Commons upon one of Sir James Mackintosh's earlier motions upon the penal law, to this effect:—"That he who shortens a human life puts in jeopardy a human soul." Who can disprove the awful truth? Who will venture to say that the most hardened and depraved among those who pay the penalty of their guilt, if he had been secluded from the contagious society of his associates,—if he had been submitted to the influence of a process of moral and religious instruction,—might not have unfeignedly repented of his past enormities, expiated them in a way most beneficial to his injured country, and at length given that country the satisfaction of believing that a transgressor had been reclaimed from his errors, and a soul rescued from perdition?"*

* Dees on Capital Punishment, page 22.

The following passage from a sermon by Dr. Dodd, a native of Bourn, Lincolnshire, and who himself fell a sacrifice to the severe laws of his country, is fully in point:—"If among the Romans, a civic crown was the reward of him who saved the life of a single citizen, of what may not they be thought worthy, who by forwarding so salutary and important a reformation as we have suggested, shall be instrumental to save from an ignominious death numbers of subjects and citizens: hurried into eternity in the very bloom and flower of life, with all their sins and imperfections on their heads, and cut off at once from all power of reformation, from all possibility of making amends to the state they have injured, to the friends they have distressed, and the God they have daringly offended."* This bearing of the subject must deeply interest every intelligent and pious mind.

This chapter may be closed by the following sentiments of eminent men:—

"When laws are too severe, the power of pardoning is a corrective: but this corrective is a new evil. Enact good laws, and break the magic wand by which they are paralyzed. If the punishment is necessary, it ought not to be remitted;

* Montagu, vol. iii. page 92.

if it be not necessary, it ought not to be pronounced.”—*Bentham*.

“It is possible that the further diffusion of knowledge and melioration of manners may render capital punishment unnecessary in all cases; but until we have had more experience, it is safest to tread with caution on such delicate ground, and to proceed step by step in so great a work.”—*Bradford*.

“The virtues are all parts of a circle. Whatever is humane is wise, whatever is wise is just, and whatever is wise, just, and humane, will be found to be the true interests of states, whether criminals or foreign enemies are the objects of their legislation.”—*An American Essay*.

“The history of mankind is an immense sea of errors, in which a few obscure truths are here and there observed to float. Let it not be urged then that almost all nations, in all ages, have punished certain crimes with death. The force of example and of prescription vanishes when opposed to truth. Is it any plea in favour of the barbarous superstition, which has sanctioned the sacrifice of man upon the altar of the Divinity, that human victims have bled in almost every temple?”—*Pastoret*.

“Punishments operate according to the dispositions of the people. Severe punishments harden their tempers, and defeat their own intention. The rigorous punishments of martial law do not restrain the soldiery from licentious behaviour. There are more offenders among the Turks, who bastinado their people to death for slight faults, than in England.”—*Burgh.*

“I am cordially persuaded, that, if a general reformation of the penal code cannot be effected in our nation, this is one of those enormous sins for which the Governor of the universe will surely visit us. No man, and no community of men are, in my judgment, authorised to take away life.”—*G. Wakefield.*

It appears that the renowned Chillingworth left among his MSS. a tract, entitled, “A problematical testament against punishing crimes with death in Christian societies.” “It were to be wished,” says the late Dr. Kippis, “that it had been preserved and printed; the reflections of so thinking a man on a subject which hath not to this day been treated with sufficient accuracy, extent, and precision, would probably have been found well worthy of attention.”

“The frequency of capital punishments rarely

hinders the commission of a crime, but naturally and commonly prevents its detection.”—*Dr. Johnson.*

“Penal statutes which grossly offend, by their severity, the natural ideas of proportion in criminal justice, *virtually repeal themselves*. The two ordinances of the Emperor Charles V. affixing the punishment of death in cases of *bankruptcy and forgery*, although passed in 1540 and 1545, have *never yet been acted upon* in a single instance in Holland, the most commercial state in Europe.”

—*Van der Linden.*

“It is a constant remark of the Chinese authors, that the more the penal laws were increased in their empire, the nearer they drew towards a revolution. It would be easy to prove that in all or in almost all the governments of Europe, penalties have increased or diminished, in proportion as those governments favoured or discouraged liberty.”—*Baron Montesquieu.*

“It seems to be fast approaching to an axiom that crimes are less frequent in proportion as mercy takes the place of severity, or as there are judicious substitutes for the punishment of death.”

—*Clarkson.*

“It seems to me a very unjust thing to take

away a man's life for a little money ; for nothing in the world can be of equal value with a man's life. If it be said, that it is not for the money that one suffers, but for his breaking the law, I must say that extreme justice is extreme injury."

—*Sir Thomas More.*

"Any over great penalty, besides the acerbity of it, deadens the execution of the law."—*Lord Bacon.*

"In no countries are atrocious crimes more frequent, than in those in which the punishments are the most inhuman."—*Burgh.*

"The English murder by law only."—*Voltaire.*

The Mosaic law did not require life when a wounded person survived. "If men strive together, and one smite another with a stone, or with his fist, and he die not, but keep his bed ; if he rise again, and walk abroad upon his staff, then shall he that smote him be quit, only he shall pay for the loss of his time, and shall cause him to be thoroughly healed."—*Exod. xxi. 18, 19.*

"I am of opinion that in every possible case the punishment of death should be abolished, for every execution tended to deprave rather than elevate the public mind."—*Dr. Bowring.*

"He did not think they had a right to enact

laws to take away human life, and send a man, before the natural period of his existence, into the presence of his God.”—*O'Connell*.

“The evidence of every age proved that in those countries where the laws were most severe, there the greatest crimes prevailed.”—*Wyse*.

“The only atonement that can now be made for the many murders committed under the operation of the ‘bloody and barbarous code,’ is the immediate purification of our criminal law from the stain of cruelty.”—*Morning Herald*.

On the Criminal Returns of the Metropolitan Police for 1838, it is remarked, “There can be no longer a question that the obstruction of education is tantamount to the obstruction of religion and morality. An educated and instructed people will be a moral and religious people.”—*Patriot*.

CHAPTER IV.

Momentous nature of the subject under consideration—Objections to the abolition of Capital Punishment obviated—Great influence of the Reign of Mercy in the British Dominions—Prelude to the civilization and evangelization of the World—Concluding appeal to Jurors and Judges, Ministers of Religion and the Nation, the Parliament, the Ministers of State, and the Sovereign—Form of Petition—Pleasing Anticipations of the Reign of Mercy and Truth—Propriety and Importance of the settlement of the Question at issue.

THE momentous importance of the subject under discussion must be generally acknowledged. If it be contrary to the mild spirit of Christianity to put any man to death; if it be its glory that, both before God and man, “mercy rejoiceth against judgment,” how desirable that the reign of mercy should extend “as far as winds can waft and billows roll!” It may be presumed that various objections exist to the discontinuance of capital punishment. A calm investigation of them must be viewed as intimately connected with the benevolent object of this Essay. For as has been judiciously observed,—“The antipathy to san-

guinary punishments is characteristic of a people not only of humane instinct, but of sound moral perceptions. The frequency of death inflicted for crimes, which are not of the last degree of malignant depravity, not only pains the feelings, but shocks the understanding of a people who are capable of judging of the degrees of crime by another standard than the artificial criterion of the legislator. Neither reason nor the Christian religion allows them to reverence a vindictive system of justice, which attempts the suppression of crime by a violation of those moral distinctions which are more firmly established by God and nature, than the foundations of the universe."—*Anti-Draco.*

It is presumed that the following are the most weighty and common objections:—

Does not the ancient and universal existence of capital punishment, especially for murder, prove its propriety? By no means. In the forcible language of a modern writer it may be replied, "No wise man burdens himself with the authority of antiquity. Either antiquity gave reasons for its opinions, or it did not. If it did, the fair way is to bring forward the reasons, and the writer who declines it, is suspected of not having them

to bring. If it gave none, the children in the schools know that the business of living men is to examine the works of the deceased, and mend them." "If it be objected," says Beccaria, "that almost all nations, in all ages, have punished certain crimes with death, I answer, that the force of these examples vanishes when opposed to truth, against which prescription is urged in vain. The history of mankind is an immense sea of errors, in which a few obscure truths may here and there be found. But human sacrifices have also been common in almost all nations. That some societies only, either few in number, or for a very short time, abstained from the punishment of death, is rather favourable to my argument, for such is the fate of great truths, that their duration is only as a flash of lightning in the long and dark night of error. The happy time is not yet arrived when truth, as falsehood has been hitherto, shall be the portion of the greatest number." The reprieve of the murderer Cain, the first-born of woman, establishes the position that mercy to the criminal is more ancient than condign punishment. The wide-spreading of an evil can form no rational argument for its perpetuity. "Mercy shall be built up for ever."

Though it cannot be denied that God reprieved Cain, is it not as evident that *he enjoined capital punishment to Noah and his sons?* In addition to what has been said upon this important view of the subject, the opinion of the late Rev. Dr. Ford, Ordinary of Newgate, appears deserving attention. “But, I ask, why execute at all? Who shall say the most hardened villain may not repent? Some persons who think they abound with the milk of human kindness, will say, ‘I would punish no criminals with death except they had committed murder; but blood requires blood. “Whoso sheddeth man’s blood, by man shall his blood be shed.”’ (Gen. ix. 6.) This, however, was not used by the Almighty in a particular case, but as a desultory threatening. In the case of Abel’s murder, instead of Cain being instantly punished with death, God says, “The voice of thy brother’s blood crieth to me from the ground.” What infliction is passed upon him? “When thou till-est the ground, it shall not yield unto thee her strength. A fugitive and a vagabond shalt thou be in the earth.” This seems more like sentence of *transportation*, than sentence of death. “Strange it is, our religion is so mild, and our laws so san-

guinary." * "It is surprising," says a living writer, "that any person should ever have confounded with the unchanging moral law, the denunciation of the Noahic covenant, "whoso sheddeth man's blood, by man shall his blood be shed," Gen. ix. 6. This passage is considered by some, simply in the light of a prediction of what will generally happen, as Matt. xxvi. 52, "All they that take the sword, shall perish by the sword," which is generally though not literally fulfilled. As if the Almighty in denouncing the crime of murder, had said, "With such instinctive horror will it be viewed, that its perpetrator will find it difficult to escape the infliction of the same evil which he inflicted upon his victim! I did not take the life of Cain, but suffered him to live to be an example to others. He found his punishment greater than he could bear, and such in all future ages will be the retribution of justice to the murderer." † Whatever view be entertained of this passage, it does not follow that it is obligatory under the mild sway of the gospel.

Another will ask, *Was not murder so expli-*

* Montagu, vol. ii. p. 191.

† Dees' Letter to the Marquess of Northampton, p. 8.

city punished with death by the law of Moses, that it should still be visited with the same punishment? The ceremonial law of the Jews was a type of Christ and his dispensation; and when he appeared, the types and shadows disappeared. "All the penal laws in the Pentateuch, or five books of Moses, are national or local, adapted to the particular circumstances of the Israelites, to whom they are especially directed. They are a part of their civil code, and solely obligatory on them; but they form no part of the moral law, and consequently, are not binding on any other nation."* It was not the moral law which enjoined death to the murderer, but the civil; and the civil law found its natural termination, when their national polity ceased. "God had a right, under penalty of death, to command the Israelites "not to kindle any fire throughout their habitations on the Sabbath day;" and to command them to stone to death a man for gathering sticks on the Sabbath. But will the magistrates of any other nation claim a right to do the same? Will any one imagine that God's giving special commands to the Israelites to inflict capital punishment for breach of the Sabbath, murder, &c., will

* Montagu, vol. iii. p. 161.

justify the magistrates of any other nation in inflicting the same punishment? Such severe penal laws, prohibitions, purifications, &c., were necessary for the Israelites, who had newly escaped from bondage; but these laws were never binding on any other nation. We have some superstitious prejudices in favour of capital punishments, derived from the penal laws of Moses that were abolished at the commencement of the gospel dispensation, which ought to be eradicated.” *

Another inquirer after truth may ask, *Does not Christianity approve of capital punishment where it says of the ruler, “he beareth not the sword in vain?”* Dr. Taylor observes respecting the passage, (Rom. xiii. 1—5,) “While the apostle is pleading the cause with the subject, and establishing his duty on the most sure and solid ground, he dexterously sides with the magistrate, and vindicates his power against any subject who might have imbibed seditious principles, or might be inclined to give the government any disturbance; and under this advantage he reads the magistrate a close lecture upon the nature and ends of civil government. A way of conveyance so ingenious and unexceptionable, that even Nero himself, had

* Montagu, vol. iii. p. 165. 171.

this epistle fallen into his hands, could not fail of seeing his duty clearly stated, without finding any thing servile or flattering on the one hand, or offensive or disgusting on the other." The evident design of the text is to inculcate upon Christians obedience to the "powers that be." They were at that time, and for the first three centuries, heathens, and opposed to the progress of Christianity; yet it became Christians to be subject "not only for wrath, but also for conscience sake." Is it to be supposed that, in such circumstances, the apostle can be considered as enjoining upon rulers, when they should be found Christian, the capital punishment of offences? It is presumed not; and who would have the temerity to rest the authority to put any one to death upon such a passage?

It may be asked, *Should not innocent blood be avenged, and would not the land be polluted by suffering a murderer to live?* It is evident that the civil law of the Jews enjoined, "the murderer shall surely be put to death;" but it has been observed, it is presumed that this law is not obligatory under the Christian dispensation, where no *parallel precept* is found. Indeed, Christianity appears to resolve the important question to its

original position; referring the case to God, the Judge of all. It has been very forcibly observed: “Although the mark placed on Cain might answer its appointed ends during his natural life, yet lest they should be forgotten after his death, and that succeeding generations might be left without excuse, God was pleased to leave on record a most *solemn* declaration and warning to civil magistrates and all others, “not to shed the blood even of a murderer.” And the Lord said unto him, (probably in the hearing of others,) “Whosoever slayeth Cain, vengeance shall be taken on him seven-fold.” The text denounces an awful doom on any person or persons who should have inflicted capital punishment on Cain. I must request all the defenders of sanguinary punishments to say, whether mankind has ever discovered any punishment that has had a more effectual tendency to reclaim the offender, to deter others, and to secure the public, than the punishment which God laid upon Cain? It is certain, that by it, the public were effectually warned and secured.”* God says, “To me belongeth vengeance and recompence.” “I kill, and I make alive.” “Vengeance is mine, I

* Montagu, vol. iii. p. 168.

will recompense, saith the Lord.'’ May we not, then, leave the avenging of innocent blood with his providence, who will “make inquisition for blood?” Some may inquire,

Would not murders increase by the mild system advocated, and life be placed in continual jeopardy? It is presumed, that as public executions invade the inviolability of human life, and render its destruction less repugnant to the popular feeling; so a public regard to “the sacredness of life,” even that of a murderer, would tend to throw the broad shield of the state over the existence of every man. “Some have gone so far,” says Bentham, “as to maintain that capital punishment was necessary to prevent the danger to which we were exposed from certain criminals. An assertion extremely exaggerated, the falsehood of which is demonstrable even with regard to the most formidable assassins; they are not so dangerous as *madmen*, nor so difficult to be restrained. The first reason; they commit crime when there is something to be gained by it, and a probability of escape. The mischief to be feared from madmen is not thus limited, notwithstanding which it has never been thought necessary to put them to

death. We confine them, and this method answers every purpose.” *

The writer just quoted observes: “The Lord set a mark upon Cain, lest any finding him should kill him; *not lest he should kill another man!* the danger of which (even in this our half humanized age) is urged by many in justification of the inhuman practice of putting murderers to death. But God, who best knew the human heart, knew that the danger of killing was *on the other side*, and therefore he took his measures accordingly, in order to prevent it. Whatever was the mark set upon Cain, it answered a double purpose: it warned mankind not to commit murder, and not to take away the life of a murderer.” What could God have done more than he had done to prevent the effusion of human blood?” † The conduct of the worthy Judge Eternal in the first case of murder in the human family, must be considered as conveying the most important lessons to posterity in all ages. Its accordance with the benignant spirit of Chris-

* Theory of Rewards and Punishments.—See *Montagu*, vol. iii. p. 243.

† *Montagu*, vol. iii. p. 167.

tianity is remarkable and highly instructive. Will it be asked,

What can be substituted for capital punishment that would be likely to prove useful? It is not within the writer's province to consider the important subject of prison discipline ; but it may be presumed, that imprisonment for life attended with peculiar discipline and instruction would be adapted to make a salutary impression. Dr. Ford (a very high authority before quoted) says, "When the criminal is *dead*, both the crime and the punishment are soon forgotten ; let him live and labour, and the public may benefit by his example, while he himself is making some atonement for his crime by his industry and humbly endeavouring to make his peace with God." "It appears to me certain," says Bentham, "that perpetual imprisonment and hard labour would leave a more profound impression on their minds than death." It may be interesting to know the number of persons executed in this country.

The following is a return to an address of the House of Commons, dated March 21st, 1837, respecting the number of executions for London and Middlesex for the following periods.

Three periods.	Executions.	Commit.
In three years ending 1830,	52	960
Ditto 1833,	12	896
Ditto 1836,	none.	823

Number of persons executed in England and Wales :—

1827	1828	1829	1830	1831	1832	1833	1834	1835	1836
73	59	74	46	52	54	33	34	35	17

Of the above, the following were for *murder* :—

1827	1828	1829	1830	1831	1832	1833
11	18	13	14	12	15	6

How small the expense or trouble to a nation of the perpetual imprisonment of such a number of criminals ! This appears to be the practice of some countries. “ Executions are rare in Holland. A great number for *child-murder* are condemned to work in spin-houses for life, and to be whipped annually on the day and the spot where the crime was committed. This mode of punishment is dreaded more than death ; and since it has been adopted has greatly prevented the frequency of the crime.”—*Howard*.

Mr. Hume, in his place in Parliament in 1837,

stated, “ In a prison in Belgium, he had seen 900 persons, who were condemned to capital punishment; and learned from the officer superintending it, that from his experience the abolition of capital punishment tended greatly to soften the disposition of the mass of the people.” Why should not Britain adopt a similar system?

How great would be the influence of the reign of mercy in the British dominions! Let our country advance in the melioration of the criminal code with the rapid strides of the last few years, and the horrors of the gallows will soon be

“ Buried midst the wreck of things that were.”

The writer attended a public meeting at Wisbeach recently, at which the mayor presided, and he congratulated the town of Wisbeach on the removal of their gallows. The assembly warmly reciprocated the philanthropic feeling. When shall Britain remove from her towns and cities that relic of ancient barbarism, the gallows? Will not the mild reign of our present beloved Queen be held in everlasting remembrance and admiration as the epoch of this long-desired period? What should prevent it? What but conviction, that it is equally the dictate of justice and mercy, of rea-

son and revelation? May it be thought presumption in the humble writer, whose mind has long felt the weight of the subject, and made it a matter of deep consideration, that this effort of his pen may put in motion the mind, the heaven-born, heaven-influenced mind, that shall be the honoured instrument of effecting so great an achievement for the welfare of the British empire? How great would be the influence of such a measure! The colonies and dependencies of the mother country would, unhesitatingly, tread in her steps. Jamaica is now in advance, having reduced her capital crimes to four. O, my beloved country, go forward with firm step, nor fear that mercy to the vilest of thy children can be but pleasing to Him "who willeth not the death of a sinner." Will not other countries hail thy high example and imitate thy benignity?

"O blessed land!
Where Clarkson and where Wilberforce were born!
Thee grateful Afric worships, and thy name
Poor crouching Asia dreads; but she shall learn
To love it too!"

Such an event might be viewed as one of the preludes of the civilization and evangelization of

the world. Various events indicate the approach of the world's regeneration. "The seventh trumpet speaks Him near." Is it an error? is it guilt? is it defiling to the nation to shed blood by a judicial process? Is it unnecessary and mischievous, and a preventative of obtaining special mercies from the Father of mercies? God's complaint of his ancient people was, "When ye spread forth your hands, I will hide mine eye from you; yea, when ye make many prayers, I will not hear: your hands are full of blood." Let us hear our duty, "Wash you, make you clean, put away the evil of your doings from before mine eyes." Oh! that as a nation, we may return unto our God, and may he have mercy upon us, and bless us, and make us a blessing. We repeat the delightful, the glowing thought, that for Britain in all her dominions, to reign by mercy, would tend to bring on the glorious days,

"Long by prophetic minstrelsy foretold."

May the sentiments of one of her most eminent and virtuous senators, still a blessing to his country, be verified in the best and fullest influence of her character!—

"Britain! thy voice can be the dawn; ascend!
On thee alone, the eyes of Asia bend.

High arbitress ! to thee her hopes are given ;
 Sole pledge of bliss, and delegate of heaven.
 In thy dread mantle all her fates repose,
 Or bright with blessings, or o'ercast with woes :
 And future ages shall thy mandate keep,
 Smile at thy touch, and at thy bidding weep.
 Oh, to thy godlike destiny arise !
 Awake, and meet the purpose of the skies !
 Be these thy trophies, Queen of many Isles !
 Then while transported Asia kneels around,
 With ancient arts and long lost glories crowned,
 Some happier bard on Ganges' margin laid,
 Where playful bamboos weave their fretted shade,
 Shall to the strings a loftier tone impart,
 And pour in rapturous verse his flowing heart.
 Stamped in immortal light on future days,
 Through all the strain his country's joys shall blaze ;
 The Sanscrit song be warmed with heavenly fires,
 And themes divine awake from Indian lyres !”

*Lord Glenely.**

It now remains to conclude this Essay by an appeal to jurors and judges, the ministers of religion and the nation, the parliament, the ministers of the crown and the Sovereign. The bearing of the question at issue in this discussion gravely affects *every juror*. It has been justly observed

* “India’s Cries to British Humanity,” 3rd edition, by the Author ; pp. 386, 500. Simkin : London.

by Eden in his "Principles of Penal Law," "Nothing is more certain than that the subject of these inquiries deserves the attention of every man amongst us. For no rank, no elevation of life, no conduct how circumspect soever, ought to induce any responsible man to conclude that the penal system doth not, nor possibly can concern him. A very slight reflection on the numberless unforeseen events which a day may bring forth, will be sufficient to show that we are all liable to the imputation of guilt; and consequently, all interested, not only in the protection of innocence, but, in the assignment to every particular offence of the small punishment compatible with the welfare of society. It highly concerns the safety of every individual, as well as the general morality and happiness of the people, that the innocent be protected against unmerited severities, and that the guilty be conducted with certainty to punishments proportionate to their crimes." The propriety and force of these observations must be felt. How requisite and important to obtain and, promote just and merciful views of the jurisprudence of our country! The following anecdote speaks volumes:—

"Do you notice that juryman dressed in blue?"

said one of the Judges at the Old Bailey to Judge Nares. "Yes." "Well, then, take my word for it there will not be a single conviction to-day for any capital offence." The observation proved true. The Judge himself related the fact to one of the London magistrates a short time after, and from him the author had it.* It was well observed by the late Mr. Canning, "It is vain to suppose that jurors will enforce your laws, which are repugnant to the best feelings of our nature." Thus are the moral principles of jurors and the sanctity of oaths undermined.

Never forget the forcible remarks of the author of "Anti-Draco, that "however the lawgivers may be responsible for the spirit of the laws, it is the people who work the machinery of justice. As prosecutors, as witnesses, as jurors, the operative process of criminal law is in their hands ; and if its spirit be of such a character as to excite their repugnance, the machinery by which it is to be executed will not work well."

The writer feels almost deterred by diffidence, from presuming to advert to the bearing of the important point at issue upon the venerable and

* Bentham on the Theory of Rewards and Punishments.
See Montagu, vol. iii p. 246.

venerated Judges of the land. The importance of the question, affecting the life, present and eternal, of the criminal, in every part of the British empire, must be felt by your Lordships. How desirable to set at rest the great principles of jurisprudence affecting human life ! That great amelioration of the criminal code was requisite has been long felt ; and to use the forcible language of Lord Holland, “ Reform was called for by all the principles of philosophy, religion, and sound policy.” How long has the nation been learning, that “ mere examples of terror produce no moral reformation.” Humanity, with tears of gratitude on behalf of her erring children, expresses her thankfulness for the mercy extended to them by the improved state of the criminal code ; but Christianity, more benevolent and enlightened, asks, “ O ye Judges, let your laws in the length and breadth of my empire respect the sacredness of life. My Founder died to atone for the sins of man ; let no man be required to die, but let mercy, human and divine, be so poured upon his heart as to dissolve it ‘ in shame and confusion of face,’ in ‘repentance towards God, and faith towards the Lord Jesus Christ.’ ” When the reign of mercy commences, and no man shall be required to die, till called

away by the great Arbiter of life and death, how will your Lordship's entrance into our towns and cities in the discharge of your high functions be hailed, without that awful apprehension of impending death which now appals the human heart!* That your Lordships may soon enjoy the satisfaction of such a career of justice, blended with mercy, is doubtless the ardent desire of myriads, yea, of millions. Haste, happy day !

The ministers of religion are deeply interested in the subject of this Essay. The thoughtful, the benevolent, the pious of every station and rank naturally look up to you for correct views of the moral and religious bearing of the question at issue. It cannot be dissevered from Christianity. Is not the final appeal to the precepts, the spirit, and the genius of our common Christianity?" The writer humbly and earnestly solicits your attention to the subject. Let us inquire, "What is written in the law, how readest thou?" What saith the scripture? The inquiry is momentous as

* "C'est le triomphe de la liberté, lorsque les loix criminelles tirent chaque peine de la nature du crime: tout l'arbitrairie cesse; la peine ne descend point du caprice du législateur, mais de la nature de la chose; et ce n'est pas l'homme qui fait violence à l'homme."—*L'Esprit des Lois*, xii. 4.

eternity ; and weighty as the interests of the immortal soul. Why has it not attracted more notice ? The law of Moses required that the thief should restore fourfold. Why have you not lifted up your voice more powerfully, when men have been hurried out of time into eternity for trifles ? The benevolent Redeemer asked, “ How much is a man better than a sheep ? ” but what numbers have perished by our sanguinary laws for stealing a sheep ? Improved as are the laws, still “ grievous bodily injury ” is refined to “ constructive murder ; ” and “ he who had himself, in the midst of violence, stayed his hand, and respected the sacredness of life, ” is yet hurried by our sanguinary code into another world, prepared or unprepared.* Lord G. Grenville observed in Parliament, “ If the wisdom of the law equal robbery with murder, who is to blame, if an ignorant, misguided subject reduce murder to robbery ? If the legislature of the nation confound the gradations

* “ Christian morality does not enjoin that the passionate and unsuccessful attempt upon the life of one person shall be washed out with the blood of another ! The British law does, indeed, enjoin it ; but it is the modern not the ancient British law that obliterates all distinction between an abortive attempt upon human life and deliberate murder.”—*Pun. of Death.* vol. ii. p. 300.

of iniquity, who is to blame if common minds are incited to the commission of a greater crime to prevent the detection of the less? Who is to blame, if the next larceny is accompanied by murder, to which, from the facility it affords to escape, there is always a powerful temptation?" "How forcible are right words!" Can you sit silent spectators of such an atrocity? Does Christianity in its silence upon the subject of capital punishment, and in its precepts and spirit, indicate that mercy to the greatest offender becomes those who are so much indebted to heaven's mercy? let the truth shine forth in all its mild grandeur. Has the benevolent and immortal Wilberforce uttered the sentiment, "that he who shortens a human life putteth in jeopardy a human soul?" Who can be a calm spectator of the existence of public executions? Let the momentous inquiry be mooted "from Dan to Beersheba." Does not the spirit of Christianity disapprove of putting any man to death? Let the best talents of the Christian church be brought to elucidate the momentous subject. The eternal interests of the empire, of the world, are identified in it.

Our appeal is next addressed *to the nation*. The well-known sentiment of Nelson is often applied to various purposes, "England expects

every man to do his duty." What does England, what does the empire expect of her most benevolent and talented sons, but to demonstrate, and for ever to set at rest with the light of Christianity, "the principles of jurisprudence affecting human life?"

M. le Compte de Sellon, a Genevese, in a prize essay upon the subject, has well observed, "To sacrifice a man in honour of an abstract principle of safety, is like following the example of the Indians in offering human sacrifices to their gods. The legality of the scaffold cannot repose on the right which society has to defend itself, but on the right it pretends to have of punishing. All is destroyed by the scaffold; there is nothing but a brutalizing and profanation of our nature in the blow of the axe, which takes away that remorse that endows the past with pain, and the future with virtue. There is a kind of atheism in the stroke which takes from man the responsibility of his destiny, and which sends him to the grave in the midst of his crimes. Thus the sanction of the guillotine, which men would have pass for that of justice, destroys all others. It destroys our dignity, brings contempt on our nature, and overthrows the sublime plan of Providence in this world, and its consummation in another."

Mr. Ewart, in his place in parliament, in May, 1837, stated, "In 1834, the population of France and Prussia was fifty millions, yet the number of capital punishments in those countries in that year amounted to only 17; while in England and Wales, the population of which was only fifteen millions, the executions were 34. This was a proof that as the criminal code was less sanguinary, crimes became less frequent. For five years, ending in 1829, the executions in France amounted to 352, and the trials to 1182; but, in the five years ending in 1834, when the punishment of death was very much lessened, the executions were 131, and the trials 1132: thus showing that as capital punishment decreased, crimes also decreased. This was shown in the case of Belgium. For the four years ending 1829, the executions were 17, and the trials 49; while in the four years ending in 1834, there were no executions, and yet trials had decreased, for they were then only 41."

"I am impressed," said Sir John Anstruther, "with the belief that a separation of the legislative and judicial powers is in all cases desirable; and that when it can be attained, the subjects of a free nation are entitled to look for the safety and the security of their property, not to the exercise

of judicial discretion, but to the enactments of the legislature.”*

Let the public mind become intelligent and benevolent, and the reign of mercy will begin.

“Public opinion,” said Lord Lauderdale, “cannot be held too sacred by public men.” “The voice of enlightened public opinion is irresistible. Nothing but time is wanting to render it triumphant, and favourable circumstances not unfrequently give it an elastic kind of impulse, which issues in unexpected success.”

To the *Parliament*, our appeal is next directed. To you the nation looks for the calm and full investigation of every question of political economy. That at issue in this discussion is one of deep interest. The errors and sanguinary proceedings of legislative councils in other days and other countries, read a lesson to the present age, not too readily to follow the steps of antiquity. Important changes have taken place in the criminal law of the country which have worked well; the good work is begun, may it rapidly progress, till “the upas tree of legislative extermination” is rooted up from our soil! For in the language of the preamble of a statute of Queen Mary; “the state of

* Montagu, vol. iii. p. 71.

every king consists more assuredly in the love of the subject towards their prince, than in the dread of laws made with vigorous pains; and that laws made for the preservation of the commonwealth, without great penalties, are often more obeyed and kept, than laws made with extreme punishments."

An old writer upon the subject has thus expressed himself: "If the consideration of this preventing justice were worthy of the wisdom of Parliament, and, in the mean time, expert and wise men were to make preparation for the same, as the text saith, 'that the Lord may bless thee,' blessed shall he be that layeth the first stone of this building; more blessed that proceeds in it; and most of all that finisheth it to the glory of God, and the honour of our king and nation."*

In the sentiments of a late philanthropist, "I humbly and earnestly wish, that the supreme legislature would begin the reformation by rescuing our penal code from any future stain of human blood; by substituting statutes with penalties more proportionate to the crimes, more adapted to our advanced state of civilisation, and better

* Coke on the Criminal Law.

calculated to answer the ends of all civil punishment: by so doing, they would prevent any future violation of God's prerogative of life and death. This would contribute more towards reforming our morals and meliorating the state of society, than all the capital punishments that have been inflicted in our country."*

To *the Ministers of the state*, the responsible advisers of the crown, we naturally look with much anxiety, when we consider the awful subject of capital punishment. The writer feels very diffident at the thought of addressing a few remarks to such distinguished characters, with the hope that this humble effort of his pen may obtain their candid consideration. Is it indeed the fact, as stated by a respectable London paper in reference to a public execution in the late reign? "In this, as in all other matters of state, the ministers are the responsible advisers of the crown, the persons in whose breasts the decision entirely rests. The king is bound in this, as in other matters both of foreign and domestic policy, to abide by the advice of his ministers." How awful, how responsible, the power of life and death! How important, that the most enlightened and Christian views should be cultivated on this momentous subject!

* Montagu, vol. iii. p. 172.

“ The existence,” says M. Le Compte de Sellon, in a prize essay upon capital punishment, “ which is diffused through the universe, is sacred and inviolable in man only : because in man only, endowed with liberty and reason, it possesses the character of personality. Man has not only a right to existence, he has still more a right to exist such as God made him ; free, active, and intelligent ; and this right is so sacred, that even he himself cannot lawfully resign it. Society has a legal authority, only to protect the right, and not in any case to sacrifice it. There is a wide difference between the political existence of society and the existence of the individuals which compose it. The existence of man comes from God ; it comes from man into societies. In the former, it is the gift of creation ; in the latter, of convention. This is the reason why there is a character belonging to an attack on human life, which belongs not to one on political existence.

“ The case of a civil ruler and his subject is much like that of a father and his minor son. If his son behave unseemingly, the father may correct him. If after all due admonitions and corrections the son should prove to be incorrigible, the father may expel him from his family, he may disinherit him, but he may not kill him ! All civil

governments originated in families. By the alliance or union of many families it became national. But the stream cannot rise higher than the fountain. If no father have the right to inflict the punishment of death on his minor son, then a million of fathers would have no right by their representatives to do it. The jurisdiction of the civil magistrate can never rise higher than that of a father over his son during his minority.”*

If this reasoning be conclusive, it cannot be right to take the life of man for any crime, in which life is not actually sacrificed, and thus be exposed to the cutting rebuke of Beccaria, “Is it not absurd that the laws which detest and punish homicide, should, in order to *prevent* murder, publicly *commit* murder themselves?” But our “high argument” goes to prove that human life is too sacred to be touched by man; and we appeal to observation and to the mild genius of Christianity, whether such a sentiment popularized, would not do more to abolish murder, treason, &c., than the most sanguinary laws? “The downfall of Rome is partly to be attributed to the repeal of the Porcian law. That law formed a barrier against political

* Montagu, vol. iii. p. 160. See also, Williams on the Inexpediency and Inefficacy of Capital Punishment. 1836. p. 20.

oppression. When it was abrogated, the limits of tyranny were enlarged, the arm of the oppressor was strengthened. Cicero appears to have regarded capital punishment in this light, as dangerous to liberty. He exclaims with rapture in speaking of the Porcian law, “*O nomen dulce libertas! O jus eximum nos civitatis! O lex Porcia!*” Be it your high, eternal honour to surround your beloved sovereign, your government, and the life of every subject, with the protection of the Porcian, humane, and Christian law.

Can the humble writer of this essay presume to anticipate, that it may ever reach the hand of *his beloved sovereign*, Her most gracious Majesty the Queen? He does cherish such an anticipation; assured that its presentation would be graciously received. But how can he presume to address your Majesty? He would not have attempted it, but from the importance of the subject, its congeniality with the well-known benevolence of your Majesty’s heart, and the writer’s deep sympathy with your Majesty’s affecting situation when called to sign the awful death warrant. The importance of the subject of this essay, would lead its humble author to anticipate from your Majesty a careful and anxious perusal of its pages. How grateful the idea, that human life is so inviolable even in a

criminal, and his eternal destiny so momentous, that Christianity intercedes for the continuance of his probation, whatever be the severity of discipline to which he may be adjudged! Your Majesty gave great satisfaction to your subjects on ascending the throne, by expressing a deep interest in the amelioration of the criminal code, and it has been forcibly observed, "Nothing can be more grateful to an enlightened nation, which is desirous of certain great improvements in its laws, than to find their monarch commencing the duties of royalty, by acknowledging the propriety and necessity of such improvements in the legislation of the country."

The writer has been reflecting on the situation of your Majesty when called to fix your Majesty's honoured name to a death warrant. The following paragraph has deeply affected the writer:— "We have it on the authority of one, who heard the fact from a member of the privy council, that he frequently saw his Majesty, George the Fourth, in a state of extraordinary agitation, at the meeting of the council, when the fate of a criminal was under consideration. He would contend the matter with the ministers, and leave the table, and lean sometimes on the chimney piece, advocating the cause of mercy, until overruled by his respon-

sible advisers ! The late Mr. Huskisson declared, that he was present at the council which decided on Fauntleroy's fate, and that the impression of overwhelming feeling on that occasion never left his mind." Happy, thrice happy day, when the benevolent reign of Christianity throughout your Majesty's empire shall achieve its triumph of mercy in inculcating "the inviolability of life." The poet has declared, "Mercy is enthroned in the hearts of kings ;" and the wisest of men asserts, "Mercy and truth preserve the king, and his throne is upheld by mercy." May your Majesty's reign be immortalized by "mercy rejoicing against judgment." Such an era will well become and add imperishable lustre to your Majesty's reign. Mercy, affection, and inviolable friendship become the female character. Hence the poet sings to the praise of woman—

"Him who for guilty man's transgression died,
Her kiss betrayed not, nor her tongue denied
And when apostles left him to his doom,
She lingered near his cross, and watched his tomb!"

May the reign of judicial mercy distinguish that of your Majesty to the latest posterity! With the sentiments of the eminent Beccaria the writer will close his humble appeal. "If these truths should

happily force their way to the thrones of princes, be it known that they come attended with the secret wishes of all mankind ; and tell the king who deigns them a gracious reception, that his fame shall outshine the glory of conquerors ; that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antoninus, or a Trajan."

It has occurred to the writer, that, as the expression of public opinion to the legislature is of great importance in promoting the amelioration of the criminal code, the following outline of a petition may assist the benevolent in the expression of their sentiments. Petitions should be addressed to both Houses of parliament.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled,

The humble Petition of
Humbly Sheweth,

That your Petitioners are deeply impressed with the sentiment, that the efficacy of criminal laws depends less upon the severity, than the certainty of punishment ; and that laws which cannot be carried into execution without shocking the

feelings of society and exciting sympathy for the offenders, appear to be contrary to reason, and opposed to the dictates of our common christianity.

That the criminal laws of this country, though greatly improved, are incapable of uniform execution ; and that, consequently, under the present system, the lives of men depend less upon the express provisions of the law, than upon the humanity of the Judge, or the Secretary of State; which places these important officers in a very painful and responsible situation.

That the ameliorations effected in our criminal laws during the last few years appear successful in the decrease of those crimes which were formerly punished with death ; affording strong confirmation of the sentiment of an eminent philanthropist—" It seems to be fast approaching to an axiom, that crimes are less frequent in proportion as mercy takes the place of severity, or as there are judicious substitutes for the punishment of death."

That the moral responsibility and future destiny of man,—the benevolent genius of the gospel of our salvation,—the direct and remote influence of the British empire in every quarter of the globe,

and among all civilized nations, impose an important duty upon the enlightened Government of this country, of giving an example to the world in the philanthropic character of its jurisprudence.

That your petitioners therefore humbly pray your Honourable House, as speedily as possible, to restrict the awful sentence of death to actual and wilful murder, as preparatory to the calm discussion of the abolition of capital punishment; in which prayer, your petitioners believe, a vast majority of the inhabitants of these realms most cordially unite.

And your Petitioners will ever pray.

To every philanthropic and pious mind the anticipation of the reign of mercy and truth is most grateful. Prophets have long since foretold of these days; and by what are they characterized so much as by the destruction of the angry passions, and the spread of knowledge? "The wolf shall dwell with the lamb, and the leopard shall lie down with the kid; the calf and the young lion and the fatling together; and a little child shall lead them. The cow and the bear shall feed, their young ones shall lie down together; and the lion shall eat grass like the ox. The sucking child

shall play upon the hole of the asp, and the weaned child shall put his hand on the cockatrice' den. They shall not hurt nor destroy in all my holy mountain ; for the earth shall be full of the knowledge of the Lord, as the waters cover the sea," Isa. xi. 6—9.

A writer before quoted observes, "The public attention is directed to the subject, and I will not augur so ill for my country as to despair that the public will arrive at just conclusions concerning it. Truth is slow-paced, but sure ; and when she fastens on the minds of a generous people, her labours may be difficult, but her triumphs must be complete. She will throw down every altar upon which a pagan barbarism, under the mask of Christian principle, has immolated myriads of victims ! Too long upon these altars has human happiness been sacrificed with libations of human blood. Too long have we seemed unconscious that the destiny of the immortal soul was closely connected with the preservation of animal life. Too long has the gallows been considered a sure and speedy cure for the moral diseases of the great family of man. But from such a haughty assumption of rights, which puny man has neither the power nor the skill to exercise, I would appeal to

the truly glorious, because pure and bloodless system of Christianity.* Here are no gibbets, no ruthless desolations, but all is lovely and refreshing—"peace on earth, and good will to men."† The grand and benevolent object advocated may not be speedily realized, but the benevolent mind may take encouragement from the history of the past, to persevere in its labours. "An opinion cannot be formed, and propagated and popularized in a few months, nor sometimes, in a few years. The abolition of the slave trade cost Wilberforce twenty years of persevering application. Every year repulsed, every year he returned to the assault; printing pamphlets, convening public meetings of philanthropists, collecting notices and documents on the barbarous cruelties practised on board of the vessels engaged in the horrible traffic, and thus exciting the imaginations, and melting the hearts of his fellow citizens, he broke at length,

* Of the recent executions in Canada, the New York Morning Herald, Jan. 1839, observes,—"A dozen have paid the forfeit of their lives,—besides those who fell in battle,—enough in all conscience to satisfy law and justice. Now let Mercy assume her blessed sway." It has been stated in Parliament that the number executed amounted to *thirty-four*!

† Pell's letter to the Marquess of Northampton, p. 22.

with the multitude, into the temple of justice and triumph."—*Eclectic Review, Jan. 1833.*

The writer cannot lay down his pen without again adverting to the propriety and importance of the settlement of the question at issue. The question returns like the echo, and should return till its final adjustment,—“Ought the civil magistrate to inflict capital punishment for civil crimes?” The right, the necessity, and the expediency are questionable. In the language of an intelligent author, “I humbly contend that no man or body of men ought to inflict the punishment of death. In the formation of man, God was pleased to endow him with certain rights, such as life, conscience, day of probation, &c., which are *inalienable*. No man can transfer his life to another, nor a right to take it from him. Life is the union of soul and body; and death, the dissolution of that union. Nothing can pass to the purchaser by such dissolution, and no equivalent can be received. Many persons will readily grant, that no man in his private capacity hath a right to take away the life of another for any crime; yet they say, that our legislative and executive bodies have a right to do it. But no man can invest another, as his representative, with

a right which he himself does not possess. He may deserve to be confined or expelled: but he cannot forfeit his life to the community. He never was possessed of it in *fee simple*; he was only tenant at will under his Creator. Will not clemency, moderation, and affection, and if necessary, confinement and humane corrections, tend more to lessen the number and atrocity of crimes, and to promote the peace and safety of the community, than inhumanity and bloodshed?"* Should the final appeal be made to the precepts and genius of Christianity, may it not be presumed that capital punishment does not accord with the spirit of that gospel whose Author in death prayed for his murderers, "Father, forgive them, they know not what they do?" What individual, or family, or nation is not interested in the momentous question at issue? Let the politician, the philosopher, the philanthropist, the divine, bring their united wisdom and experience to its elucidation. All that is interesting in time, and weighty in eternity, hangs upon its decision. Who but must sympathize with the criminal trembling upon the threshold of another world, and in danger of

* Montagu, vol. iii. p. 156, 157.

being “ driven away in his wickedness ?” who can reflect upon the blood shed by unjust and merciless laws in our own country, and in the various nations of the earth, without feeling a deep interest in the prevalence of judicial reform ?

The Editor of the *Eclectic Review*, in an able article on “ Criminal Law Reform,” justly observes of the late Sir Samuel Romilly, “ That great and estimable man, whose character was so happily compounded of qualities which at once excite our admiration, and win our love, deserves the lasting gratitude, which he is sure to receive, of that prosperity for whose benefit his life was devoted to incessant labour and constant sacrifice. His example will be a stimulus to all future exertion. It will teach the most neglected not to despair ; it will animate the least hopeful to a faith in the final and not very distant victory of ‘ the right.’ Whoso has truths of deep importance to mankind to utter, but fears the taunts of the scorner, or whoso is placed in the most arduous post of struggling with well-meaning, but ill-informed bigotry, and is tempted to faint in his course, let him think on the name of Romilly, and brace himself for that fight whose victories are no less renowned, and

are of far greater value than the blood-stained trophies of war.”*

The propriety of these efforts is candidly acknowledged by the enlightened government of this country. The right hon. Lord John Russell, in a debate upon the punishment of death, May, 1837, said, “They were called upon, on the ground of religion and philosophy, for a total abolition of capital punishments. That was a question he preferred leaving for public discussion, while what he sought to do, was to make laws conformable to the opinion of the times. He wished to do this rather than to precede public opinion by the abolition of capital punishments. He was of opinion that it was not expedient to proceed to their total abolition. He felt that the subject was one which ought to be left to the discussion of writers, and when public opinion had been directed to it, it might then be a fitter time to be submitted to them.”

In reference to these remarks, it has been observed by a public journal, “We think the writers have done their duty; and that the subject is already ripe for legislation. From the time of Beccaria to the present day, there has been such a suc-

* Eclectic Review, March, 1839.

sion of able publications as few topics can parallel. The philosophy of the subject has been sounded to its profoundest depths in the constitution of our nature. The morality of the punishment has been carefully investigated both by the dictates of Christian precept, and those of utilitarian calculation. Its statistics have been collected and arranged, offering the demonstration of facts against the efficacy of sanguinary and vindictive inflictions. And although there has been some diversity of opinion, yet the strong and prevailing tendency has assuredly been towards the total abolition of a mode of punishment which has little to redeem it, as compared with other punishments, from the allegation of total failure. It is not discussion that we want, but legislation." Is the nation prepared for the triumph of mercy, even in the temple of justice? Let the subject of this essay be discussed from east to west, and from north to south. Let the voice of the nation to its legislature for the reign of mercy be loud, and universal, and continuous! and mercy will rejoice against judgment. The author, from the fruit of several years' attention to this subject, has laid before his readers his views; and, to use the language of an eloquent friend, "those principles

which seek and deserve a home in every breast, and which he earnestly hopes will sink abidingly into all their hearts, and on which he invokes the descending dews of the eternal hills."

THE END.



NEW WORKS

PUBLISHED BY

THOMAS WARD AND CO.,
PATERNOSTER-ROW.

Dedicated by special permission to HER MAJESTY,

THE ANIMAL CREATION : its Claims on our Humanity stated and enforced. By the Rev. J. STYLES, D.D. To this Essay the Prize of 100 Pounds was awarded by the EARL of CARNARVON, the Hon. and Rev. BAPTIST NOEL, and Mr. Sergeant TALFOURD, M.P. Royal 12mo, price 9s. cloth; 12s. silk.

HOURS OF THOUGHT. By W. M'COMBIE. With considerable additions. Third edition, in royal 18mo, 3s. 6d. cloth.

RELIGIOUS PARTIES IN ENGLAND; their Principles, History, and Present Duty. Including an examination of the Theory of Dr. Chalmers on Church Establishments. By ROBERT VAUGHAN, D.D., Professor of Ancient and Modern History in University College, London. In royal 12mo, 5s. cloth, second edition.

GUTZLAFF'S CHINA. A Journal of Three Voyages along the Coast of China; with Notices of Siam, Corea, and the Loo Choo Islands. By CHARLES GUTZLAFF. With an Introductory Essay on the Policy, Religion, &c., of China, by the Rev. W. ELLIS, Author of a "History of Madagascar," &c. Third edition, royal 12mo, 7s. cloth.

NO FICTION. A Narrative founded on Facts. By ANDREW REED, D.D. Ninth Edition, 12mo, 6s. cloth.

MARTHA: A Memorial of an only and beloved Sister. By ANDREW REED, D.D. Third Edition, 12mo, 6s. cloth.

PULPIT STUDIES; or, Aids to Preaching and Meditation. Chiefly Narratives and Facts. By the Rev. J. STYLES, D.D. 12mo, 4s. cloth.

COUNSELS TO A YOUNG MINISTER, in relation to his Studies, Preaching, and Pastoral Duties. By the Rev. J. LEIFCHILD, D.D. 18mo, neat cloth, price 1s.

Works published by Ward and Co., Paternoster-row.

Ward's Library of Standard Divinity.

WITHOUT ABRIDGEMENT.

THE CHOICEST WORKS OF THE MOST EMINENT DIVINES.

Beautifully printed in double columns, medium 8vo, on the finest paper.

Already published.

ARCHBISHOP LEIGHTON'S THEOLOGICAL LECTURES. Price 1s. 4d.

HOWE'S REDEEMER'S TEARS WEPT OVER LOST SOULS. Price 9d.

BROOKS'S UNSEARCHABLE RICHES OF CHRIST. 1671. Price 2s. 10d.

LECTURES ON PREACHING AND ON PUBLIC PRAYER. By EBENEZER PORTER, D.D. Price 3s.

THE DEATH OF DEATH, IN THE DEATH OF CHRIST. By ROBERT MAYHEW. 1679. Price 1s. 8d.

HALL'S HELP TO ZION'S TRAVELLERS. Price 1s. 6d.

Many other equally valuable works are in progress.

CELESTIAL SCENERY; or, the Planetary System Displayed; illustrating the Perfections of Deity, and a Plurality of Worlds. By T. DICK, LL.D., Author of the "Christian Philosopher," "Philosophy of a Future State," &c. Second Edition, 12mo, 10s. 6d. cloth, with upwards of One Hundred Engravings.

THE SEASONS.

BY ROBERT MUDIE, Esq.

In Four Volumes, royal 18mo, cloth, price 5s. each; or in embossed roan, 6s. 6d. each,

SPRING, SUMMER, AUTUMN, WINTER.

Illustrated with Frontispieces and Vignette Titles, printed in Oil Colours by Baxter.

By the same Author, in Four Volumes, price 5s. each, or in embossed roan, 6s. 6d. each,

THE HEAVENS, EARTH, AIR, SEA.

Embellished with Frontispieces and Vignette Titles, printed in Oil Colours by Baxter.





**PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET**

UNIVERSITY OF TORONTO LIBRARY

